No. 15174

United States
Court of Appeals
for the Ninth Circuit

AMERICAN PIPE & STEEL CORPORATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record
In Two Volumes

Volume I
(Pages 1 to 324)

Petition to Review a Decision of the Tax Court of the United States.

Phillips & Van Orden Co., 870 Bryant Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

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For the Petitioner.

CHARLES K. RICE,
Asst. Atty. General;
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Washington 25, D. C.;
JOHN POTTS BARNES,
Chief Counsel;
ROLLIN H. TRANSUE,
Special Atty.;
Internal Revenue Service,
Washington 25, D. C.,

For the Respondent.

DOCKET ENTRIES

1950

May 29—Petition received and filed. Taxpayer notified. Fee paid.

May 31—Copy of Petition served on General Counsel.

May 29—Request for hearing in Los Angeles, Calif. filed by taxpayer. 6/13/50—Granted.

July 6—Answer filed by General Counsel.

July 13—Copy of Answer served on taxpayer, Los Angeles, Calif.

1951

Nov. 21—Hearing set February 4, 1952, Los Angeles, Calif.

1952

Jan. 24—Motion to continue until sometime in May, 1952, filed by taxpayer. Granted.

Feb. 20—Hearing set May 19, 1952, Los Angeles, Calif.

May 19—Hearing had before Judge Opper on joint motion for continuance and respondent's motion for leave to file amendment to answer. Motions granted. Respondent allowed 60 days to file amendment to answer. Petitioner allowed 20 days thereafter to file reply thereto. Both motions filed and served at hearing. Appearance of Alva C. Baird and William A. Cruikshank, Jr., filed.

July 18—Motion for extension to August 29, 1952, to file amendment to answer, filed by General Counsel. 7/21/52—Granted.

1952

July 23—Hearing set September 22, 1952, Los Angeles, Calif.

Sept. 2—Joint motion to continue filed by taxpayer. 9/3/52—Granted.

Sept. 2—Amendment to Answer filed by General Counsel. Leave to file granted. 9/3/52—Copy served.

Sept. 22—Reply to Amendment to Answer filed by taxpayer. 9/23/52—Copy served.

1953

Jan. 8—Hearing set February 24, 1953, Los Angeles, California.

Feb. 10—Motion to continue (due to illness) filed by petitioner. Granted.

July 6—Hearing set Sept. 14, 1953, Los Angeles, California.

July 24—Motion to continue to a later date in Los Angeles, filed by petitioner. 7/27/53—Granted.

Aug. 28—Hearing set Dec. 7, 1953, Los Angeles, Calif.

Dec. 12—Hearing had before Judge Withey on motion for continuance — continued generally and copies served at hearing.

1954

Feb. 18—Hearing set May 31, 1954, Los Angeles, Calif.

May 11—Hearing changed to June 1, 1954, Los Angeles, Calif.

June 1, 2, 3, 4, 7 & 11—Hearing had before Judge Van Fossan on the merits, Petitioner's

1954

oral motion to consolidate with docket 28565 Granted. Stipulation of Facts with exhibit 1-A attached. Appearance of Thomas A. Baird, filed. Petitioner's brief due Aug. 6, 1954; Respondent's Brief due Sept. 20, 1954; Petitioner's reply due Oct. 11, 1954.

June 23—Transcript of Hearing, 6/ 1/54, filed.

June 23—Transcript of Hearing, 6/ 2/54, filed.

June 23—Transcript of Hearing, 6/ 3/54, filed.

June 23—Transcript of Hearing, 6/ 4/54, filed.

July 27—Transcript of Hearing, 6/ 7/54, filed.

July 27—Transcript of Hearing, 6/11/54, filed.

Aug. 5—Motion for extension to Sept. 6, 1954, to file brief, filed by petitioner. 8/5/54—Granted.

Sept. 2—Motion for extension to 10/4/54, to file petitioner's brief, to 11/22/54, for respondent's reply brief, and to 12/27/54, to file closing brief, filed by petitioner. 9/3/54—Granted.

Oct. 1—Motion for extension to Oct. 15, 1954, to file brief filed by taxpayer. 10/1/54—Granted.

Oct. 18—Brief filed by taxpayer. Copy served.

Oct. 25—Stipulation to receive petitioner's exhibits #54 and #55 and respondent's BB, filed.

Oct. 25—Stipulation to correct transcript of hearing, filed.

Dec. 2—Motion for extension to Jan. 13, 1955, to file brief filed by General Counsel. 12/3/54—Granted.

1955

Jan. 7—Motion for extension to Feb. 28, 1955, to file brief filed by General Counsel. 1/10/55 Granted.

Mar. 1—Motion for leave to file the attached answer brief, brief lodged, filed by General Counsel. 3/2/55—Granted.

Mar. 28—Motion for extension to May 16, 1955, to file reply brief, filed by taxpayer. 3/28/55 —Granted.

May 11—Motion for extension to June 20, 1955, to file reply brief, filed by taxpayer. 5/11/55 —Granted.

June 17—Motion for extension to July 6, 1955, to file reply brief, filed by taxpayer. 6/17/55 —Granted.

July 5—Motion for extension to July 27, 1955, to file reply brief, filed by taxpayer. 7/5/55 —Granted.

Nov. 14—Motion for leave to file the attached reply brief, brief lodged, filed by taxpayer. 11/14/55—Granted. 11/15/55, Copy served.

Nov. 30—Findings of Fact and Opinion filed, Judge Van Fossan. Decision will be entered under Rule 50. 11/30/55—Copy served.

Dec. 1—Order correcting report filed Nov. 30, 1955, as to Docket No. 28565, filed.

1956

Feb. 21—Agreed computation for entry of decision filed.

1956

Feb. 28—Decision entered, Judge Van Fossan.

May 14—Motion to substitute George DeLew, Esq., as counsel, in place of Alva C. Baird, Thomas A. Baird, William A. Cruikshank, Jr., Arthur J. Hair, with affidavit of service by mail, filed by petitioner. Granted 5/14/56.

May 14—Entry of appearance of George DeLew, as counsel, with affidavit of service by mail, filed.

May 22—Petition for Review by U. S. Court of Appeals for the Ninth Circuit with Statement of Points filed by petitioner.

May 22—Designation of Contents of Record on Review filed by Petitioner.

May 23—Notice of Filing Petition for Review with affidavit of service by mail of Notice of Filing Petition for Review and Designation of Contents of Record on Review, filed.

The Tax Court of the United States

Docket No. 28539

AMERICAN PIPE & STEEL CORPORATION,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the

Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:PAK) dated March 3, 1950, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation organized and existing under the laws of Nevada, with its principal office at 2201 West Commonwealth Avenue, Alhambra, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on March 3, 1950. The statement attached to said deficiency notice, in support of said determination, refers to a report of examination dated April 25, 1949, which covered petitioner's returns for the calendar years 1944, 1945 and 1946. (A copy of such part of said report of April 25, 1949, as is deemed material, is attached hereto and marked Exhibit B.)

3. The taxes in controversy are income and excess profits taxes for the calendar years 1944, 1945, and 1946, and in the total amount of $213,776.38, consisting of the following

Year	Nature of Tax	Deficiency
1944	Income tax	$23,504.02
1945	Income tax	$17,753.50
1946	Income tax	$53,264.70
1944	Excess profits tax	$34,955.02
1945	Excess profits tax	$84,299.14

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The respondent erred in determining that the acquisition by petitioner of the capital stock of Palos Verdes Estates, Inc., on December 2, 1943, constituted a transaction the principal purpose of which was the avoidance of Federal income and excess profits tax by securing the benefit of deductions, credits or other allowances of Palos Verdes Estates, Inc., which would otherwise not be enjoyed by petitioner.

(b) The respondent erred in determining that, pursuant to the provisions of section 129 of the Internal Revenue Code, there shall not be allowed to petitioner any deduction, credit or other allowance due solely to the acquisition of the capital stock of Palos Verdes Estates, Inc.

(c) The respondent erred in determining that the acquisition by the petitioner of the capital stock of Palos Verdes Estates, Inc., was for the purpose of avoiding income and excess profits taxes as distinguished from a business purpose and that, therefore, Palos Verdes Estates, Inc., was not a member of an affiliated group of corporations within the intent of section 141 of the Internal Revenue Code, as amended, for the taxable years ended December 31, 1944, December 31, 1945, and December 31, 1946.

(d) The respondent erred in determining that the privilege of filing consolidated income and excess profits tax returns for the taxable years ended December 31, 1944, and December 31, 1945, and a

consolidated income tax return for the taxable year ended December 31, 1946, including therein the operations of the petitioner and Palos Verdes Estates, Inc., for those taxable years, is not within the purview of section 141 of the Internal Revenue Code, as amended.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Facts relied upon as to the error alleged in Paragraph 4(a) of this petition:

(1) The petitioner is a corporation incorporated under the laws of the State of Nevada, on May 27, 1929, and has its principal office at 2201 West Commonwealth Avenue, Alhambra, California.

(2) Palos Verdes Estates, Inc., is a corporation incorporated under the laws of the State of California, on March 11, 1935, and has its principal office at 2201 West Commonwealth Avenue, Alhambra, California.

(3) Petitioner keeps its books of account and files its United States income tax returns on the accrual basis of accounting. Its fiscal year is the calendar year.

(4) Palos Verdes Estates, Inc., keeps its books of account and files its United States income tax returns on the accrual basis of accounting. Prior to its affiliation with petitioner, Palos Verdes Estates, Inc., used the fiscal accounting year ending on the twenty-eighth day of February. Effective from De-

cember 2, 1943, this fiscal year was changed, with the permission and approval of the respondent, to the calendar year, to conform to that of petitioner.

(5) Petitioner filed a consolidated United States income tax return for the calendar year 1943, wherein were included the operations of Palos Verdes Estates, Inc., as a wholly owned subsidiary, for the period beginning December 3, 1943, and ending December 31, 1943. Said return showed a consolidated net loss of $228,920.22, which was the result of consolidating petitioner's net income of $16,880.52 with the net loss of Palos Verdes Estates, Inc., in the amount of $245,800.74.

(6) Petitioner filed consolidated United States income and excess profits tax returns for the calendar years 1944 and 1945, and a consolidated United States income tax return for the calendar year 1946; all such returns including the operations of Palos Verdes Estates, Inc., as a wholly owned subsidiary, and carrying over the unused portion of the said net operating loss and the unused portion of the excess profits credits of both corporations for the calendar year 1943.

(7) In 1943, petitioner was engaged in the steel fabricating business with a varied line of products including the fabrication of lethal gas cylinders or containers, under a contract for the Chemical Warfare Service. Its president, Jack Lane, and associates had acquired control of the corporation, through purchase of its stock, with a view to eliminating unprofitable lines and expanding operations

into other fields. Engineers were engaged continuously on designing and developing new types of equipment which might be profitably produced by petitioner. Many of these items were of such a nature that they could not be sold on theory alone but required demonstration in an actual proving ground in regular usage.

(8) Petitioner's president, Jack Lane, had been a real estate broker for many years and was alert to the possibilities in that field resulting from the demand for real estate and housing, which must follow the tremendous influx of population to Southern California by reason of the war effort.

(9) On or about May 25, 1943, one R. P. Archer made a proposal in writing to the petitioner that it furnish working capital directly to, or otherwise participate with him in a plan he had for acquiring control of, Palos Verdes Estates, Inc., a corporation owning more than seven hundred (700) lots which said Archer stated he believed could be sold for a minimum of $350,000.00, if funds were available to pay off some $80,000.00 of accrued and unpaid back property taxes.

(10) Petitioner's Board of Directors considered the Archer proposal but was unable to see where an investment in acquiring control of Palos Verdes Estates, Inc., at that time, would tie in with petitioner's business and, for that reason, rejected the proposal.

(11) The matter of acquiring shares of Palos

Verdes Estates, Inc., had first been taken up with petitioner's president, by Archer, several months prior to May 1943. At that time petitioner's president realized the possibilities in the venture as a real estate operation but did not deem it to be a desirable direct investment for petitioner. However, he was in search of an assistant with executive and administrative experience to take over the expediting work for petitioner's fabricating plant. Knowing of Archer's previous experience and ability and believing that he would amply fill the expediting position, petitioner's president hired said Archer as his assistant and agreed that he would cause petitioner to loan Archer, from time to time, the funds he required to purchase shares of Palos Verdes Estates, Inc., which Archer found were available at the price he was willing to pay. Petitioner's president also authorized Archer to devote some reasonable part of his time, not fully required in the expediting work, to contacting shareholders of Palos Verdes Estates, Inc., and accumulating the number of shares necessary for the control Archer sought.

(12) Petitioner's president, having been a real estate broker for many years, knew that lots in the Palos Verdes Estates had previously sold for as much as $15,000 to $30,000 each and that a large number had sold at prices ranging from $3,000 to $5,000 each. Having faith in the continued growth of Los Angeles and the surrounding areas, he thought he could foresee the day when the demand for lots, created by the influx of war workers to this

area, would cause the Palos Verdes lots to again sell for such prices.

(13) Following the rejection of the Archer proposal by the Directors, petitioner's president became more interested in considering various other ways in which Palos Verdes could be used profitably as a subsidiary. It became clearer to him that a real estate subdivision, with a proper housing project, would offer several opportunities for marketing products of petitioner. Likewise, a corporation which had been established in the real estate business for so many years, could enter into many activities in which petitioner could not directly engage for fear of direct competition with some of its customers, but which would be profitable to Palos Verdes and beneficial to petitioner, in promoting and widening the markets for its products. Petitioner's president, therefore, decided to resubmit the matter of purchasing the control of Palos Verdes Estates, Inc., to petitioner's Board of Directors.

(14) In the meantime, on June 23, 1943, pursuant to the plan which R. P. Archer had formulated, the Board of Directors of Palos Verdes Estates, Inc., decided that its Articles of Incorporation should be amended to make it possible to levy an assessment on its capital stock to provide funds to pay off accrued taxes and finance continuation of the business. Pursuant to the Board's recommendation, shareholders representing 2,611 shares out of a total of 3,841 shares of preferred stock outstanding (all common stock having been previously fore-

closed of its rights) gave their written consent to the amendment of the Articles of Incorporation to provide for assessment of the capital stock. A Certificate of Amendment was duly executed on that date and was filed in the office of the Secretary of State of California, on June 23, 1943.

(15) On August 26, 1943, the Board of Directors of Palos Verdes Estates, Inc., adopted a resolution levying an assessment in the amount of $40.00 per share upon all shares of the company then issued and outstanding, said assessment being payable on or before September 27, 1943, and fixing September 28, 1943, as the date upon which the assessment would become delinquent, and October 15, 1943, as the time for the sale of any shares on which the assessment then remained unpaid. This date of sale was postponed, by resolution of the Board, to November 4, 1943, and again later to December 2, 1943.

(16) On or about September 1, 1943, petitioner's contract with the Chemical Warfare Service for fabricating lethal gas containers, was cancelled, under such circumstances as appeared to indicate to the management that, as the result of such cancellation, the petitioner would suffer a loss which might total as much as $300,000. At this point, it appeared clear that petitioner's overall operations for 1943 would result in a very substantial loss.

(17) At the time of the cancellation of the said contract, petitioner had on hand approximately 1,000 of the lethal gas containers which it had been

fabricating under the contract. These were rejected containers or excess products. Petitioner's president was convinced, on the basis of his investigations, that there was a great future ahead in supplying butane or liquified gases in containers to new subdivisions or outlying districts where no gas supply was available from commercial pipe lines. He concluded that these excess gas containers, fabricated under the Chemical Warfare Service contract, were properly adaptable as tanks for this liquified gas and constituted an ideal means for making an entry into that field, at a time when gas tanks and containers were very difficult to obtain. On the other hand he saw the need of a subsidiary corporation which could demonstrate the use of these tanks or containers in actual operation in a real estate development and handle the direct marketing of the fabricated product to the users, as well as going into the distribution of liquified gas. Such direct retailing, he deemed to be outside the scope of the petitioner's business because, in many instances, it would bring petitioner into direct and open competition with its own customers for fabricated products. Palos Verdes Estates, Inc., appeared to him to be an ideal means of accomplishing this end.

(18) Petitioner's president was convinced that Palos Verdes Estates, Inc., could be used as an outlet to promote sales of water pipe and casing fabricated by petitioner; sales of containers, in connection with the sale of propane gases for domestic use; as a proving ground for oil well equipment de-

veloped and fabricated by petitioner; as well as providing a controlled outlet for fostering the development of fabricated steel houses, for which the petitioner was then working on plans, in conjunction with representatives of nationally known manufacturers.

(19) Under date of November 25, 1943, petitioner's president wrote a letter to its Board of Directors, wherein he made a comprehensive presentation of his several ideas for utilizing Palos Verdes Estates, Inc., as a subsidiary company, to aid in handling ventures which could not be directly engaged in by petitioner and for the testing, developing, demonstrating and marketing of petitioner's products to the mutual advantage of both corporations. On the basis of this presentation, the Board of Directors approved and authorized the purchase of control of Palos Verdes Estates, Inc.

(20) The sale of the delinquent shares of Palos Verdes Estates, Inc., was duly held on December 2, 1943; the only bid received being that of R. P. Archer, who purchased ninety-six (96) shares of preferred stock for the amount of the assessment, plus five per cent (5%) in penalties, or a total of $4,032.00. The said sale was confirmed by the Board of Directors of Palos Verdes Estates, Inc., new certificates were issued to Archer for the 96 shares, and all other shares were declared forfeited and cancelled in accordance with law.

(21) Thereupon, Archer delivered all of said shares of Palos Verdes Estates, Inc., to petitioner.

and was paid therefor his aggregate costs or a total consideration of $11,248.96. Thereafter, petitioner was the sole shareholder in Palos Verdes Estates, Inc., and petitioner's president was elected a director and president of the subsidiary.

(22) Upon a more thorough investigation of the affairs of Palos Verdes Estates, Inc., petitioner's president discovered that, while the Superior Court of Los Angeles County, by an Interlocutory Decree entered August 2, 1943, in Case No. 487,125, had found prior tax assessments against Palos Verdes Estates, Inc., properties to be illegal and incorrect, had determined the correct amount of the taxes, had set aside all illegal tax sales and restored the owner's right of redemption free of interest, penalties and costs, the Court also had limited the owner's right of redemption by requiring payment of such delinquent taxes to be made within six months after the Interlocutory Decree of the Court became final.

(23) The taxes found to be due and fixed as to amount by said Interlocutory Decree of August 2, 1943, after removing all penalties and interest, aggregated $80,941.39. These taxes were due Los Angeles County, California, for the tax year 1931-1932, and were the basis for the tax deeds which were given by the Tax Collector July 1, 1938, as stated in said Decree. Estimated taxes for the tax year 1943-1944, then unpaid, were $7,465.00. Also unaffected by the Interlocutory Decree, were unpaid Palos Verdes Homes Association assessments in the amount of $4,685.82, which were subject to

penalties and interest in approximately the same amount.

(24) When petitioner's president discovered the full facts with respect to the time limitation upon the owner's right of redemption, he concluded and advised the petitioner's Board of Directors that, because the cancellation of the Chemical Warfare Service contract and the resulting complication in the financial position of petitioner had made it impossible for petitioner to furnish the funds for payment of the delinquent taxes of Palos Verdes Estates, Inc., every effort must be made by Palos Verdes Estates, Inc., to salvage what it could out of the remaining lots.

(25) The first step taken by Palos Verdes Estates, Inc., was to offer large blocks of lots for sale to contractors and builders of housing projects, who would be interested in taking over blocks of lots for the purpose of erecting houses thereon, with a view to selling the house and lot as an immediately usable residence. This was a method of selling never before used by Palos Verdes Estates, Inc. The management was surprised to find that a Mr. Carl Dahlberg was the only contractor who evidenced any interest in the possible purchase of lots.

(26) Mr. Dahlberg, at that time, was Vice-President of Drysemble House, Inc., a corporation which was licensed by Celotex Corporation to make use of the Celotex System of construction and materials. His company constructed houses in the area as follows:

Los Angeles and vicinity	1,000
Wilmington	500
Long Beach	600

Dahlberg was the nephew of the founder and president of Celotex Corporation, and, through this relationship and in his official capacity had made many personal and business contacts with persons with ample finances to help promote any type of deal or business in which he saw real possibilities of profits. Mr. Dahlberg was interested in trying to put together a group of persons who would finance the erection of prefabricated houses on Palos Verdes lots and he was reasonably certain that he had sufficient well-founded contacts to secure the necessary priorities for the erection of such houses.

(27) Petitioner's president, knowing of Mr. Dahlberg's connections, believed this to be an ideal means of achieving one of the principal business purposes which prompted the acquisition of the shares of Palos Verdes Estates, Inc., namely to develop the property with prefabricated houses and thereby establish an outlet for products of petitioner, namely; water pipe and casing, liquified gas containers, etc., through Palos Verdes Estates, Inc.

(28) For the foregoing reasons, two tracts comprising 310 and 126 lots, respectively, at opposite ends of the property, were sold to Dahlberg on or about December 18, 1943, for a price of $18,000.00. His note in that amount, maturing in four years with interest at five per cent (5%) was taken in

payment. Because of representations by said Dahlberg that he could not get the required financial backing unless he had title to the property in his name, Palos Verdes Estates, Inc., transferred the title to Dahlberg.

(29) Thereafter, when said Dahlberg was unable to finance the payment of the delinquent taxes on his lots, Palos Verdes Estates, Inc., loaned him $9,-84.83 to pay such back taxes on the choice lots in his tracts, taking his note in that amount, dated April 7, 1944, with interest at five per cent (5%) and payable in four years. This step was taken because both parties still believe that the necessary priorities could be secured and the proposed houses erected on these lots. On this basis, full repayment of the amounts due on Dahlberg's notes and additional profits through subsequent developments were definitely contemplated.

(30) Dahlberg continued to work on the matter of priorities until early in 1945, when one of his wealthy partners, Mr. Hyatt Dehn, died very suddenly. After that, Dahlberg went to Houston, Texas, for several months but returned to Los Angeles in the summer of 1946, to set up General Panel Corporation, with assets acquired from the War Assets Administration, to manufacture prefabricated houses. He continued to try to tie this new enterprise in with the erection of houses on the Palos Verdes lots.

(31) General Panel Corporation has some $2,-00,000 of working capital and was programmed to

get some $6,000,000 more from F. H. A., under Title VI, to finance the manufacture of a very large quantity of prefabricated houses. This company was well regarded by Mr. Wilson Wyatt, the head of the Federal government housing program, who was pushing the plan to erect large numbers of prefabricated houses throughout the country. Dahlberg's plan to erect houses on the Palos Verdes lots, under this Federal program, failed of fulfillment because the whole government housing program collapsed with the departure of Wilson Wyatt.

(32) Following the cancellation of the Chemical Warfare Service contract of petitioner, in September, 1943, several weeks were required for the preparation and filing of its claim in connection with the termination and cancellation of said contract. Negotiations thereon, in late December, made it appear that government representatives did not intend to allow petitioner any profit on the contract and that the loss thereon might possibly run as high as $300,000.00. On or about December 28, 1943, petitioner's president finally was able to effect a settlement agreement, under which the petitioner's actual loss on the contract was limited to approximately $116,000.00. The petitioner had profits of approximately $132,000.00 for the year on other war contracts and, therefore, had an unconsolidated net income for the year of $16,880.52. The unconsolidated net loss of Palos Verdes Estates, Inc., for the period of affiliation in 1943, was $245,800.74.

(33) Petitioner had gone ahead with its plans to utilize the new subsidiary to develop and prove the real value in actual use of certain of petitioner's fabricated products. Investigations were made of other real estate tracts, but no sizeable purchases were made in 1943.

(34) In December, 1943, Palos Verdes Estates, Inc., took over a lease, expiring on May 15, 1945, covering a certain refinery of El Tejon Oil & Refining Company, at Bakersfield, California. The said refinery was rehabilitated by installation of refinery equipment fabricated by petitioner and the refinery was placed upon a profitable basis. In addition to direct profits accruing to Palos Verdes Estates, Inc., from these refinery operations, the business of the petitioner was directly benefited through demonstrating the superiority of its fabricated refinery equipment and promoting the sale of such equipment to customers of petitioner. Palos Verdes Estates, Inc., operated this refinery for a period of approximately eighteen months.

(35) On December 15, 1944, petitioner caused Palos Verdes Estates, Inc., to join with Fletcher Oil Company (the latter being a partnership) in acquiring a certain oil lease which had been obtained by their assignor, as their agent and nominee, from Las Flores Land and Oil Company, covering land situated in Santa Barbara County, California. Palos Verdes Estates, Inc., and Fletcher Oil Company each holding a 50% interest then entered into an Operating Agreement covering drilling of

wells on the leased premises and production of oil therefrom. The first well drilled on said property was a producer at the rate of approximately four hundred (400) barrels per day and the second well a producer at the rate of approximately one thousand (1,000) barrels per day. This property subsequently proved to be a very profitable venture for Palos Verdes Estates, Inc., from the standpoint of profits derived from production and from the proving up of a very valuable oil property which has been estimated to be worth in excess of $1,000,000.00. This venture also was directly tied in with the business of the petitioner through installation of production equipment fabricated by petitioner, which took the water out of the oil without reducing the gravity of the oil and thus enabled Palos Verdes and Fletcher Oil Company, as lessees, to pay the landowner greater royalties than major oil companies producing from offset wells on adjoining leases. This development forced the oil companies to investigate petitioner's production equipment on this lease and produced increased business for petitioner through sales of similar equipment to the other producing companies.

(36) ~ In January, 1944, after much dispute with owners of houses in Palos Verdes, and in order to salvage something further from the 225 lots remaining after the Dahlberg sale, an auction was held by Palos Verdes Estates, Inc. The attendance at said auction was disappointing and some lots were disposed of at sacrifice prices, giving purchas-

ers good opportunities to resell at a later date at higher prices. There was not sufficient time remaining for advertising and holding a second auction, and for that reason, all the remaining lots were lost under the Final Court Decree entering a judgment in favor of the State of California, on May 15, 1944. Final judgment in favor of Palos Verdes Estates, Inc., on all lots redeemed by payment of taxes was entered on March 16, 1945.

(37) At the time of filing the consolidated return for the calendar year 1943, there was also filed the separate return of Palos Verdes Estates, Inc., for the period beginning March 1, 1943, and ending December 2, 1943. The books of Palos Verdes Estates, Inc., were closed for this purpose on December 2, 1943, the date of acquisition of the Palos Verdes shares by petitioner. There was filed with this separate return a request for permission to change the accounting period of Palos Verdes Estates, Inc., to conform to the calendar year used by petitioner. The request was approved by a letter from respondent, under date of June 16, 1944, symbols IT:P:T 1-RGW.

(b) Facts relied upon as to the error alleged in Paragraph 4(b) of this petition:

(1) to (37) The petitioner realleges all of the facts in this petition set forth in Paragraph 5(a) as the facts relied upon as to the error alleged in Paragraph 4(a) of this petition.

(c) Facts relied upon as to the error alleged in Paragraph 4(c) of this petition:

(1) to (37) The petitioner realleges all of the facts in this petition set forth in Paragraph 5(a) as the facts relied upon as to the error alleged in Paragraph 4(a) of this petition.

(d) Facts relied upon as to the error alleged in Paragraph 4(d) of this petition:

(1) to (37) The petitioner realleges all of the facts in this petition set forth in Paragraph 5(a) as the facts relied upon as to the error alleged in Paragraph 4(a) of this petition.

Wherefore, the petitioner prays that this Court may hear this proceeding and,

(a) Determine that the purchase by petitioner of the capital stock of Palos Verdes Estates, Inc., on or about December 2, 1943, was a purchase for business purposes and did not constitute a transaction the principal purpose of which was the avoidance of Federal income and excess profits taxes by securing the benefit of deductions, credits or other allowances of Palos Verdes Estates, Inc., which would otherwise not be enjoyed by petitioner.

(b) Determine that section 129 of the Internal Revenue Code has no application to petitioner's acquisition of the capital stock of Palos Verdes Estates, Inc., and that petitioner is entitled to the allowance of any deduction, credit or other allowance to which Palos Verdes Estates, Inc., was entitled under the Internal Revenue Code.

(c) Determine that the acquisition by petitioner of the capital stock of Palos Verdes Estates, Inc.,

was not for the purpose of avoiding income and excess profits taxes, as distinguished from a business purpose, and that, therefore, Palos Verdes Estates, Inc., was a member of an affiliated group of corporations within the intent of section 141 of the Internal Revenue Code, as amended, for the taxable years ended December 31, 1944; December 31, 1945 and December 31, 1946.

(d) Determine that the privilege of filing consolidated income and excess profits tax returns for the taxable years ended December 31, 1944, and December 31, 1945, and a consolidated income tax return for the taxable year ended December 31, 1946, including therein the operations of the petitioner and those of Palos Verdes Estates, Inc., for said taxable years, was within the purview of section 141 of the Internal Revenue Code, as amended, and that such consolidated returns were properly filed by the petitioner.

(e) Determine that, by virtue of the determinations in (a), (b), (c), and (d) above, there is no deficiency in income or excess profits taxes of the petitioner for any of the taxable years ended December 31, 1944, December 31, 1945, and December 31, 1946.

(f) And grant such other and further relief as the Court may deem necessary or proper.

/s/ ARTHUR J. HAIR,
Counsel for Petitioner.

Duly verified.

EXHIBIT A

Form 1279 (Rev. July, 1948)

Treasury Department

Internal Revenue Service
417 South Hill Street
Los Angeles 13, California

March 3, 1950

Office of Internal Revenue Agent in Charge
Los Angeles Division.
LA:IT:90D:PAK.

American Pipe & Steel Corporation,
230 Date Avenue,
Alhambra, California.

Gentlemen:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1944, 1945 and 1946, discloses a deficiency of $94,522.22, and that the determination of your excess profits tax liability for the taxable years ended December 31, 1944, and 1945 discloses a deficiency of $119,254.16, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the

90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner,

By /s/ GEORGE D. MARTIN,
Internal Revenue Agent in
Charge.

Enclosures:
Statement,
Form of waiver.

LA:IT:90D:PAK

Statement

American Pipe & Steel Corporation
230 Date Avenue
Alhambra, California

Returns Examined

	Form	Year
American Pipe & Steel Corporation	1120 and 1121	1944
230 Date Avenue,	1120 and 1121	1945
Alhambra, California	1120	1946
Subsidiary Company:		
Palos Verdes Estates, Inc	1122 and 1122E	1944
230 Date Avenue,	1122 and 1122E	1945
Alhambra, California	1122	1946

Tax Liability of American Pipe & Steel Corporation for the Taxable Years Ended December 31, 1944, December 31, 1945, and December 31, 1946

Income Tax

Year	Liability	Assessed	Deficiency
1944	$ 23,504.02		$ 23,504.02
1945	17,753.50		17,753.50
1946	120,273.47	67,008.77	53,264.70
Totals	$161,530.99	$67,008.77	$ 94,522.22

Excess Profits Tax

Year	Liability	Assessed	Deficiency
1944	$ 34,955.02		$ 34,955.02
1945	84,299.14		84,299.14
Totals	$119,254.16		$119,254.16

In making this determination of your tax liability careful consideration has been given to the report of examination dated April 25, 1949, to your protest dated July 22, 1949, and to the statements made at conferences held.

On or about December 2 1943, American Pipe & Steel Corporation acquired all of the capital stock of Palos Verdes Estates,

Inc., for a total consideration of $11,248.96. For the taxable years ended December 31, 1944, and December 31, 1945, consolidated corporation income and declared value excess-profits tax returns on Form 1120 and consolidated corporation excess profits tax returns on Form 1121 were filed by American Pipe & Steel Corporation, including therein the operations of Palos Verdes Estates, Inc.; likewise, a consolidated corporation income tax return was filed for the taxable year ended December 31, 1946. In the returns so filed there are also claimed net operating loss deductions, excess profits credits and unused excess profits credit carryovers attributable solely to the acquisition of the capital stock of Palos Verdes Estates, Inc. It is determined that the acquisition of Palos Verdes Estates, Inc., constituted a transaction the principal purpose of which was the avoidance of Federal income and excess profits tax by securing the benefit of deductions, credits or other allowances of Palos Verdes Estates, Inc., which would otherwise not be enjoyed by American Pipe & Steel Corporation. Pursuant to the provisions of section 129 of the Internal Revenue Code it is determined that there shall not be allowed to American Pipe & Steel Corporation any deduction, credit or other allowance due solely to the acquisition of the capital stock of Palos Verdes Estates, Inc.

It is also determined that, since the acquisition by the American Pipe & Steel Corporation of the capital stock of Palos Verdes Estates, Inc., was for the purpose of avoiding income and excess profits taxes as distinguished from a business purpose, Palos Verdes Estates, Inc., was not a member of an affiliated group of corporations within the intent of section 141 of the Internal Revenue Code, as amended, for the taxable years ended December 31, 1944; December 31, 1945, and December 31, 1946.

It is also determined that the privilege of filing consolidated income and excess profits tax returns for the taxable years ended December 31, 1944, and December 31, 1945, and a consolidated income tax return for the taxable year ended December 31, 1946, including therein the operations of American Pipe & Steel Corporation and Palos Verdes Estates, Inc., for those taxable years is not within the purview of section 141 of the Internal Revenue Code, as amended.

A copy of this letter and statement has been mailed to your representative, Mr. Arthur J. Hair, 453 South Spring Street,

Los Angeles 13, California, in accordance with the authorization contained in the power of attorney executed by you.

Adjustments to Net Income
Taxable Year Ended December 31, 1944

	Income Tax Net Income	Excess Profits Net Income
Consolidated net income as disclosed by return (Loss)	($322,814.46)	($311,901.00)
Unallowable deductions:		
(a) Net loss of subsidiary disallowed	203,690.02	203,690.02
(b) Net operating loss deduction disallowed	215,639.88	210,852.02
(c) Intercompany profit in inventories	2,294.14	2,294.14
(d) Wages disallowed	2,175.00	2,175.00
Totals	$100,984.58	$107,110.18
Additional deduction:		
(e) 50 per centum of interest on borrowed capital		1,257.52
Separate net income of American Pipe & Steel Corporation	$100,984.58	$105,852.66

Explanation of Adjustments

(a) For the reasons previously stated, the items of income and deductions of your subsidiary corporation, Palos Verdes Estates, Inc., resulting in a net loss of $203,690.02, are eliminated from the consolidated net income shown by the return in computing the separate net income of American Pipe & Steel Corporation.

(b) For the reasons previously stated, the net operating loss deduction claimed in the consolidated return, representing a net loss for the taxable year ended December 31, 1943, of the Palos Verdes Estates, Inc., is eliminated from consolidated net income in computing the separate net income of American Pipe & Steel Corporation.

(c) The adjustment made in the consolidated return for the elimination from consolidated net income of a claimed intercompany profit in inventories in the amount of $2,294.14 is reversed inasmuch as it is determined that the privilege of filing a consolidated return for this taxable year is not within the purview of section 141 of the Internal Revenue Code.

(d) It is determined that wages, amounting to $2,175.00, paid in contravention of the provisions of the Emergency Price Control Act of October 2, 1942, as amended, or the regulations or rulings promulgated thereunder, do not constitute an ordinary and necessary business expense.

(e) In computing the amount of consolidated excess profits net income shown by the return an adjustment was made for 50 per centum of interest on borrowed capital in the amount of $9,702.87, of which the amount of $1,257.52 is applicable to your subsidiary corporation, Palos Verdes Estates, Inc. Inasmuch as it is determined that the privilege of filing a consolidated return for this taxable year is not within the purview of section 141 of the Internal Revenue Code, the adjustment so made with respect to 50 per centum of interest on borrowed capital of Palos Verdes Estates, Inc., is reversed.

Adjustments to Invested Capital
Taxable Year Ended December 31, 1944

Consolidated invested capital as disclosed by return		$2,921,915.28
Addition:		
(a) Accumulated earnings and profits at beginning of taxable year		222,424.29
Total		$3,144,339.57
Reductions:		
(b) Equity invested capital of Palos Verdes Estates, Inc.	$2,593,655.85	
(c) Average borrowed invested capital of Palos Verdes Estates, Inc.	5,918.76	
(d) Reduction on account of inadmissible assets	1,854.44	2,601,429.05
Separate invested capital of American Pipe & Steel Corporation		$ 542,910.52

Explanation of Adjustments

(a) It is determined that the correct amount of accumulated earnings and profits of American Pipe & Steel Corporation at the beginning of the taxable year is $222,424.29. Inasmuch as no amount of accumulated earnings and profits is claimed in the return, the amount so determined is added to invested capital of said corporation.

(b) and (c) For the reasons previously stated, the items of equity invested capital and average borrowed invested capital of Palos Verdes Estates, Inc., are eliminated from consolidated invested capital in computing the separate invested capital of American Pipe & Steel Corporation.

(d) It is determined that the correct amount of reduction on account of inadmissible assets is $3,354.44 instead of the amount, $1,500.00, shown in the return, or an increase of $1,854.44.

Computation of Unused Excess Profits Credit Adjustment
Taxable Year Ended December 31, 1944

In the return there is claimed an unused excess profits credit adjustment in the amount of $64,998.13 representing an unused excess profits credit carryover, from the taxable year ended December 31, 1943, of the American Pipe & Steel Corporation. The amount so claimed is computed without first being carried back to the taxable years ended December 31, 1941, and December 31, 1942, as required by the provisions of section 710 (c) of the Internal Revenue Code. The amount of the excess profits credit for 1943 is accepted as correct. Taking into account the requirements of section 710 (c) of the Internal Revenue Code the correct amount of unused excess profits credit adjustment allowable for the taxable year ended December 31, 1944, is determined as shown in the following:

Excess profits credit for taxable year ended 12-31-43	$64,998.13
Excess profits net income for taxable year ended 12-31-43	21,668.38
Unused excess profits credit for taxable year ended 12-31-43	$43,329.75

Application of Unused Excess Profits Credit

Excess profits net income for taxable year ended 12-31-41 (as agreed to)		$55,355.94
Excess profits credit for taxable year ended 12-31-41 (as agreed to)	$24,971.52	
Unused excess profits credit carryover from 1940 (as agreed to)	20,375.95	45,347.47
Balance		$10,008.47
Portion of unused excess profits credit for 1943 required to extinguish excess profits net income for 1941		$10,008.47
Excess profits net income for taxable year ended 12-31-42 (as agreed to)		$52,543.63
Excess profits credit for taxable year ended 12-31-42 (as agreed to)		30,759.11
Balance		$21,784.52
Portion of unused excess profits credit for 1943 required to extinguish excess profits net income for 1942		$21,784.52

Summary

Unused excess profits credit for 1943 (as above)		$43,329.75
Less: Portion carried back to 1941 (as above)	$10,008.47	
Portion carried back to 1942 (as above)	21,784.52	31,792.99
Unused excess profits credit adjustment allowable for 1944		$11,536.76

Computation of Excess Profits Tax
Taxable Year Ended December 31, 1944

Excess profits net income		$105,852.66
Less: Specific exemption	$10,000.00	
Excess profits credit (8% of $542,910.52 invested capital)	43,432.84	
Unused excess profits credit adjustment	11,536.76	64,969.60
Adjusted excess profits net income		$ 40,883.06

Excess profits tax:	
95% of $40,883.06	$ 38,838.91
(Limitation under section 710 (a) (1) (B) not applicable.)	
Total	$ 38,838.91
Less: Credit allowable—Section 784, I.R.C.	3,883.89
Correct excess profits tax liability	$ 34,955.02
Excess profits tax assessed:	
Original, account No. 9401001	
Deficiency of excess profits tax	$ 34,955.02

Computation of Income Tax
Taxable Year Ended December 31, 1944

Net income adjusted	$100,984.58
Less: Income subject to excess profits tax	40,883.06
Normal-tax net income	$ 60,101.52
Surtax net income	$ 60,101.52

Computation Under General Rule
(Sections 13 and 15, I.R.C.)

Normal tax—24% of $60,101.52	$ 14,424.36
Surtax —16% of $60,101.52	9,616.24
Total income tax under general rule	$ 24,040.60

Computation of Alternative Tax
(Section 117 (c), I.R.C.)

	Normal Tax Net Income	Surtax Net Income
Income as above	$60,101.52	$ 60,101.52
Less: Excess of net long-term capital gain over net short-term capital loss	3,577.27	3,577.27
Ordinary income	$56,524.25	$ 56,524.25
Normal tax—24% of $56,524.25		$ 13,565.82
Surtax —16% of $56,524.25		9,043.88

Partial tax	$ 22,609.70
Plus: 25% of $3,577.27	894.32
Total alternative tax	$ 23,504.02
Correct income tax liability (alternative tax)	$ 23,504.02
Income tax assessed:	
Original, account No. 9300000	
Deficiency of income tax	$ 23,504.02

Adjustments to Net Income
Taxable Year Ended December 31, 1945

Consolidated net income as disclosed by return (Loss)		($127,255.90)
Unallowable deductions:		
(a) Net operating loss deduction disallowed	$322,814.46	
(b) Wages disallowed	1,360.00	
(c) Capital stock tax	1,250.00	325,424.46
Total		$198,168.56
Additional deductions:		
(d) Net profit of subsidiary eliminated	$ 50,649.52	
(e) Intercompany profit in inventories eliminated	1,774.39	52,423.91
Separate net income of American Pipe & Steel Corporation		$145,744.65

Explanation of Adjustments

(a) For the reasons previously stated the net operating loss deduction in the amount of $322,814.46, representing net operating loss carryovers of Palos Verdes Estates, Inc., for the taxable years ended December 31, 1943, and December 31, 1944, is disallowed.

(b) It is determined that wages, amounting to $1,360.00, paid in contravention of the provisions of the Emergency Price Control Act of October 2, 1942, as amended, or the rulings or

regulations promulgated thereunder, do not constitute an ordinary and necessary business expense.

(c) The deduction claimed for capital stock tax is disallowed. It is determined that no amount of liability for capital stock tax accrued during this taxable year.

(d) and (e) For the reasons previously stated, the amount of the net income of Palos Verdes Estates, Inc., and intercompany profit in inventories (both of which items are included in consolidated net income) are eliminated in computing the separate net income of American Pipe & Steel Corporation.

Adjustments to Excess Profits Net Income
Taxable Year Ended December 31, 1945

Consolidated excess profits net income as disclosed by return (Loss)		($108,496.16)
Unallowable deductions:		
(a) Net operating loss deduction disallowed	$309,226.11	
(b) Wages disallowed	1,360.00	
(c) Capital stock tax	1,250.00	
(d) Long-term capital gains	4,097.85	315,933.96
Total		$207,437.80
Additional deductions:		
(e) Net profit of subsidiary eliminated	$ 50,649.52	
(f) Intercompany profit in inventories eliminated	1,774.39	
(g) 50 per centum of interest on borrowed capital	470.41	52,894.32
Separate excess profits net income of American Pipe & Steel Corporation		$154,543.48

Explanation of Adjustments

(a), (b), (c), (e) and (f) These adjustments are the same as made to net income and previously explained.

(d) and (g) In computing the amount of consolidated excess profits net income shown by the return adjustment was made

for the reduction of the deduction for interest for 50 per centum of interest on borrowed capital in the amount of $470.41 and for the exclusion therefrom of the amount of long-term capital gains of $4,097.85, both of which amounts are applicable to Palos Verdes Estates, Inc. Inasmuch as it is determined that the filing of a consolidated return for this taxable year is not within the purview of section 141 of the Internal Revenue Code the adjustments so made in the return are reversed.

Adjustments to Invested Capital
Taxable Year Ended December 31, 1945

Consolidated invested capital as disclosed by return		$2,908,718.09
Additions:		
(a) Accumulated earnings and profits at beginning of taxable year	$ 264,949.83	
(b) Reduction on account of inadmissible assets	2,178.12	267,127.95
Total		$3,175,846.04
Total (brought forward)		$3,175,846.04
Reductions:		
(c) Equity invested capital of Palos Verdes Estates, Inc.	$2,593,655.85	
(d) Average borrowed invested capital of Palos Verdes Estates, Inc.	7,840.19	2,601,496.04
Separate invested capital of American Pipe & Steel Corporation		$ 574,350.00

Explanation of Adjustments

(a) It is determined that the correct amount of accumulated earnings and profits of American Pipe & Steel Corporation at the beginning of the taxable year is $264,949.83. Inasmuch as no amount of accumulated earnings and profits is claimed in the return, the amount so determined is added to the invested capital of said corporation.

(b) It is determined that the correct amount of reduction on account of inadmissible assets is $3,821.88 instead of the amount, $6,000.00, shown in the return, or a decrease of $2,178.12.

(c) and (d) For the reasons previously stated, the items of equity invested capital and average borrowed invested capital of Palos Verdes Estates, Inc., are eliminated from consolidated invested capital in computing the separate invested capital of American Pipe & Steel Corporation.

Computation of Excess Profits Tax
Taxable Year Ended December 31, 1945

Excess profits net income		$154,543.48
Less: Specific exemption	$10,000.00	
Excess profits credit (8% of $574,350.00 invested capital)	45,948.00	55,948.00
Adjusted excess profits net income		$ 98,595.48
Excess profits tax:		
95% of $98,595.48		$ 93,665.71
(Limitation under section 710 (a) (1) (B) not applicable.)		
Total		$ 93,665.71
Less: Credit allowable—Section 784, I.R.C.		9,366.57
Correct excess profits tax liability		$ 84,299.14
Amount (brought forward)		$ 84,299.14
Excess profits tax assessed:		
Original, account No. 9400231		
Deficiency of excess profits tax		$ 84,299.14

Computation of Income Tax
Taxable Year Ended December 31, 1945

Net income adjusted		$145,744.65
Less: Income subject to excess profits tax		98,595.48
Normal-tax net income		$ 47,149.17
Surtax net income		$ 47,149.17

Computation Under General Rule
(Sections 13 and 15, I.R.C.)

Normal tax:		
Tax on $25,000.00	$ 4,250.00	
31% of $22,149.17	6,866.24	$ 11,116.24
Surtax:		
Tax on $25,000.00	$ 2,500.00	
22% of $22,149.17	4,872.82	7,372.82
Total income tax under general rule		$ 18,489.07

Computation of Alternative Tax
(Section 117 (c), I.R.C.)

	Normal Tax Net Income	Surtax Net Income
Income as above	$47,149.17	$ 47,149.17
Less: Excess of net long-term capital gain over net short-term capital loss	2,627.00	2,627.00
Ordinary income	$44,522.17	$ 44,522.17
Normal tax:		
Tax on $25,000.00	$ 4,250.00	
31% of $19,522.17	6,051.87	$ 10,301.87
Surtax:		
Tax on $25,000.00	$ 2,500.00	
22% of $19,522.17	4,294.88	6,794.88
Partial tax		$ 17,096.75
Plus: 25% of $2,627.00		656.75
Total alternative tax		$ 17,753.50
Correct income tax liability (alternative tax)		$ 17,753.50
Income tax assessed:		
Original, account No. 9300002		
Deficiency of income tax		$ 17,753.50

Adjustments to Net Income
Taxable Year Ended December 31, 1946

Consolidated net income as disclosed by return		$168,011.37
Unallowable deductions:		
(a) Net operating loss deduction	$107,174.58	
(b) Net loss of subsidiary	41,458.22	148,632.80
Total		$316,644.17
Reduction:		
(c) Intercompany profit in inventories		40.96
Separate net income of American Pipe & Steel Corporation		$316,603.21

Explanation of Adjustments

(a) and (b) For the reasons previously stated the net operating loss deduction claimed in the return, representing a net operating loss carryover of Palos Verdes Estates, Inc., from the taxable year ended December 31, 1944, and the net operating loss of Palos Verdes Estates, Inc., for the taxable year ended December 31, 1946, are eliminated from the consolidated net income shown by the return in computing the separate net income of American Pipe & Steel Corporation.

(c) For the reason previously stated the adjustment made in the return for intercompany profit in inventories is reversed.

Computation of Income Tax
Taxable Year Ended December 31, 1946

Net income adjusted	$316,603.21
Normal-tax net income	$316,603.21
Surtax net income	$316,603.21

Computation Under General Rule
(Sections 13 and 15, I.R.C.)

Normal tax—24% of $316,603.21	$ 75,984.77
Surtax —14% of $316,603.21	44,324.45
Total income tax under general rule	$120,309.22

Computation of Alternative Tax
(Section 117 (c), I.R.C.)

	Normal-Tax Net Income	Surtax Net Income
Income as above	$316,603.21	$316,603.21
Less: Excess of net long-term capital gain over net short-term capital loss	275.00	275.00
Ordinary income	$316,328.21	$316,328.21
Normal tax—24% of $316,328.21		$ 75,918.77
Surtax —14% of $316,328.21		44,285.95
Partial tax		$120,204.72
Plus: 25% of $275.00		68.75
Correct income tax liability		$120,273.47
Income tax assessed:		
Original, account No. 4300300		67,008.77
Deficiency of income tax		$ 53,264.70

Served May 31, 1950.

Received and filed May 29, 1950, T.C.U.S.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits that the notice of deficiency (a copy of which is attached to the petition and marked Exhibit A) was mailed to the petitioner on March 3, 1950; further admits that the statement attached to said deficiency notice refers to a report of examination dated April 25, 1949; denies the remaining allegations contained in paragraph 2 of the petition.

3. Admits that the taxes in controversy are income tax for the calendar years 1944, 1945 and 1946, and excess profits tax for the calendar years 1944 and 1945; denies the remaining allegations contained in paragraph 3 of the petition.

4. (a) through (d) Denies the allegations of error contained in subparagraphs (a) through (d) paragraph 4 of the petition.

5. (a) (1). (2) and (3) Admits the allegations contained in subparagraphs (1), (2) and (3) of paragraph 5(a) of the petition.

(4) Admits that Palos Verdes Estates, Inc., keeps its books of account and files its United States income tax returns on the accrual basis of accounting; denies the remaining allegations contained in subparagraph (4) of paragraph 5(a) of the petition.

(5) Admits that petitioner filed a consolidated United States income tax return for the calendar year 1943, wherein were included the operations of Palos Verdes Estates, Inc., as a wholly owned subsidiary, for the period beginning December 3, 1943, and ending December 31, 1943; further admits that said return showed a consolidated net loss of

$228,920.22; denies the remaining allegations contained in subparagraph (5) of paragraph 5(a) of the petition.

(6) Admits that petitioner filed consolidated United States income and excess profits tax returns for the calendar years 1944 and 1945, and a consolidated United States income tax return for the calendar year 1946; all such returns including the operations of Palos Verdes Estates, Inc., as a wholly owned subsidiary, and carrying over the unused portion of the alleged net operating loss and the alleged unused portion of the excess profits credits of both corporations for the calendar year 1943.

(7) Admits that in 1943 petitioner was engaged in the steel fabricating business; denies the remaining allegations contained in subparagraph (7) of paragraph 5(a) of the petition.

(8) Admits that petitioner's president, Jack Lane, had been a real estate broker; denies the remaining allegations contained in subparagraph (8) of paragraph 5(a) of the petition.

(9) through (19) Denies the allegations contained in subparagraphs (9) through (19) of paragraph 5(a) of the petition.

(20) Admits that the sale of delinquent shares of Palos Verdes Estates, Inc., was held on December 2, 1943; denies the remaining allegations contained in subparagraph (20) of paragraph 5(a) of the petition.

(21) Admits that Archer delivered all of said shares of Palos Verdes Estates, Inc., to petitioner, and that petitioner was the sole shareholder in Palos Verdes Estates, Inc.; denies the remaining allegations contained in subparagraph (21) of paragraph 5(a) of the petition.

(22) through (37) Denies the allegations contained in subparagraphs (22) through (37) of paragraph 5(a) of the petition.

5 (b). (1) through (37) Denies except as specifically admitted hereinabove under paragraph 5 (a) of this answer.

5(c) (1) through (37) Denies except as specifically admitted hereinabove under paragraph 5(a) of this answer.

5 (d). (1) through (37) Denies except as specifically admitted hereinabove under paragraph 5(a) of this answer.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel;

E. C. CROUTER,
L. C. AARONS,
Special Attorneys;
Bureau of Internal Revenue.

Received and filed July 6, 1950, T. C. U. S.

[Title of Tax Court and Cause.]

AMENDMENT TO ANSWER

Comes now the respondent, the Commissioner of Internal Revenue, by his attorney Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, and pursuant to leave obtained, amends the answer which was filed in the above-entitled proceeding by eliminating the prayer therefrom and by inserting therein immediately following paragraph 6, the following:

7. Further answering, and in the alternative, in the event that the Court should find that petitioner is entitled to the privilege of filing consolidated returns for the taxable years 1944 and 1945 with Palos Verdes Estates, Inc., the equity invested capital of said Palos Verdes Estates, Inc., which is usable as an element in the determination of the excess profits credits and any unused excess profits credits in such

consolidated returns for 1944 and 1945, is not greater than the sum of $2,473,550.65.

Wherefore, it is prayed that the determination of the Commissioner be approved and the petitioner's appeal be denied, and, in the alternative, that the Court determine that the equity invested capital of Palos Verdes Estates, Inc., is not more than the sum of $2,473,550.65.

/s/ CHARLES W. DAVIS, E.C.C.
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
District Counsel;

E. C. CROUTER,
R. B. SULLIVAN,
Special Attorneys;
Bureau of Internal Revenue.

Leave to file granted, John W. Kern, Judge.

Received and filed September 2, 1952.

Served September 3, 1952.

[Title of Tax Court and Cause.]

REPLY TO AMENDMENT TO ANSWER

Comes now the petitioner, through his counsel, and for reply to respondent's amendment to answer admits, denies, and alleges as follows:

The petitioner denies each and every material allegation of fact set forth in paragraph 7 of respondent's amendment to answer and calls upon the respondent to produce proof to sustain his allegation that the equity invested capital of Palos Verdes Estates, Inc., for the taxable years 1944 and 1945, was not greater than the sum of $2,473,550.65.

Wherefore, it is prayed that the relief prayed for in the petition on file herein be granted.

/s/ ARTHUR J. HAIR,
Counsel for Petitioner.

Of Counsel:

ALVA C. BAIRD, Esq.,
WILLIAM A. CRUIKSHANK, JR., Esq.

Received and filed September 22, 1952.

Served September 23, 1952.

[Title of Tax Court and Cause.]

FINDINGS OF FACT AND OPINION

The Commissioner held that the principal purpose for which American Pipe and Steel Corporation acquired the capital stock of Palos Verdes Estates, Inc., was the evasion or avoidance of income or excess profits taxes by securing the benefit of deductions, credits or allowances which it would not otherwise enjoy. Held: The petitioner has not proved the respondent's holding to be erroneous.

Appearances:

Alva C. Baird, Esq.,
Arthur J. Hair, Esq.,
William A. Cruikshank, Jr., Esq., and
Thomas A. Baird, Esq.,

For the petitioners.

R. B. Sullivan, Esq.,
Charles H. Chase, Esq., and
R. E. Maiden, Jr., Esq.,

For the respondent.

Respondent determined deficiencies in income and excess profits taxes of petitioners in amounts and for years, as follows:

Docket No. 28539

American Pipe and Steel Corporation

Year	Tax	Deficiency
1944	Income	$23,504.02
	Excess Profits	34,955.02
1945	Income	17,753.50
	Excess Profits	84,299.14
1946	Income	53,264.70

Docket No. 28565

W. G. Krieger Co.
(Formerly Palos Verdes Estates, Inc.)

Year	Tax	Deficiency
1944	Income	$ 1,783.20
1945	Income	19,521.85

Certain adjustments made by respondent in both cases are uncontested. An alternative issue affirmatively raised by respondent in the pleadings has been abandoned. The sole controversy remaining to be resolved is whether petitioner in Docket No. 28539, American Pipe and Steel Corporation, is entitled to the tax benefits claimed in the consolidated returns which it filed for 1944, 1945 and 1946 by reason of its acquisition of the entire capital stock of Palos Verdes Estates, Inc.

Findings of Fact

The stipulation of certain facts filed by the parties with an exhibit attached is adopted, and, by this reference, made a part hereof.

The petitioner in Docket No. 28539 is the American Pipe and Steel Corporation (hereinafter referred to as American Pipe), a corporation organized under the laws of the State of Nevada on May 27, 1929. It maintains its principal place of business in Alhambra, California. American Pipe keeps its books of account and files its income tax returns on an accrual method of accounting on a calendar year basis.

The petitioner in Docket No. 28568 is W. G. Krieger Co., formerly Palos Verdes Estates, Inc., and hereinafter called Palos Verdes. Palos Verdes is a corporation organized under the laws of the State of California on March 11, 1935. Its name was changed to its present form by amendment of its Articles of Incorporation on April 13, 1953. During

the taxable years at issue, it had its principle office in Alhambra, California. Palos Verdes keeps its books of account and files its income tax returns on an accrual basis of accounting. Prior to the acquisition of its capital stock by American Pipe, Palos Verdes used the fiscal accounting year ending on February 28. Effective from December 2, 1943, this fiscal year was changed, with permission and approval of the respondent, to the calendar year.

American Pipe filed consolidated income tax returns for each of the years 1943, 1944, 1945 and 1946 with the then collector of Internal Revenue for the sixth district of California at Los Angeles, in which returns were included the operations of Palos Verdes, as a wholly-owned subsidiary, beginning with the period December 3, 1943, to December 31, 1943. Such returns showed consolidated normal tax net income or losses, which were the result of consolidating the net income and/or losses of the respective corporations, as follows:

Taxable Year	American Pipe Net Income or (Loss)	Palos Verdes Net Income or (Loss)	Consolidated Net Income or (Loss)
1943	$ 16,880.52	($245,800.74)	($228,920.22)
1944	96,515.44	($419,329.90)	($322,814.46)
1945	144,909.04	($272,164.94)	($127,255.90)
1946	316,644.17	($148,632.80)	$168,011.37

The amounts stated in the Palos Verdes column and in the Consolidated column for the taxable year 1944, reflect a carry-over of claimed net operating loss of Palos Verdes for the period December 3,

1943, to December 31, 1943, deducted on the consolidated return filed for the year 1944 in the amount of $215,639.88. The amounts stated in the Palos Verdes column and in the Consolidated column for 1945 and 1946 reflect carry-overs of claimed net operating losses for the first and second preceding years of Palos Verdes deducted on the consolidated returns filed for 1945 and 1946, in the amounts of $322,814.46 and $107,174.58, respectively.

At the time of filing the consolidated return for the year 1943, a separate return was also filed by Palos Verdes for the period begun March 1, 1943, and ended December 2, 1943, with the then collector of Internal Revenue for the sixth district of California. The books of Palos Verdes were closed for this purpose on December 2, 1943.

As of December 2, 1943, the principal assets of Palos Verdes consisted of approximately 695 lots in the vicinity of Palos Verdes, California. These lots had been sold and transferred by tax deeds to the State of California on or about July 1, 1938, for nonpayment of taxes for the year 1931-1932 totaling $97,406.39. Palos Verdes had been in poor financial condition since 1936. The period between 1938 and 1943 was the worst in its financial history. The lots owned by Palos Verdes were in a restricted residential area with a specified minimum cost for houses built therein. These restrictions were supervised by lot owners who composed The Palos Verdes Homes Association and a committee known as the "Art Jury." Originally in 1920, the lots held by

Palos Verdes embraced a larger tract. As early as 1937, Palos Verdes had unsuccessfully tried to interest buyers and contractors in combining with it in the erection of houses as an attraction for the sale of its remaining lots. Much of the property was wholly or partly without improvements as to roads and utilities. It had, in 1942, three employees, two of whom were on a part-time basis.

The stock control of American Pipe, during 1942 and all subsequent taxable years in issue in this proceeding, rested in Jack Lane and W. G. Krieger, who were partners or associates in the purchase of approximately 96 per cent of the outstanding shares thereof. Their interests in the shares were equal. At all times pertinent to the issues in these proceedings, Lane was the president of American Pipe and Krieger was secretary or secretary and treasurer.

Aside from a brief period, Lane had been associated with American Pipe since about 1928. He was vice president thereof from the time he acquired his 48 per cent stock interest until in or about 1942 when he became president. He had previously been credit manager for about 10 years. Although largely self-educated, he had experience in various departments of an oil company, including the production and auditing departments. Lane had an extensive background in many phases of the local real estate business, including the development of tracts, management and selling of properties through his own concern. He had long been familiar with real estate in the Palos Verdes area,

having acquired a real estate broker's license in 1937, at which time he opened a real estate office four miles north of Palos Verdes.

American Pipe was principally engaged in the steel fabricating business, its main products being pipe and different types of tanks, fabricated products of steel, aluminum and other alloys. Some of the larger items were field fabricated. More than 500 different products were manufactured. In May or the early part of June, 1942, American Pipe received inquiries from the War Production Board, San Francisco, relative to bids for the building of 25,000 forge welded containers for lethal gas. Prior to this inquiry, American Pipe had been engaged on its own, and through subcontractors, in other war contracts, manufacturing various types of material for the war effort.

The specifications for the lethal gas containers called for a particular process of manufacture, which process was unfamiliar to Lane and/or American Pipe. After consultation with American Pipe's engineer, on June 26, 1942, Lane submitted a quotation to the War Production Board which turned the matter over to the Chemical Warfare Service for further negotiations. At that time the tanks were being purchased by the Chemical Warfare Service for $150 each.

In July of 1942, after conferences with the Chemical Warfare Service, Lane felt that the contract was going to be awarded to American Pipe. On September 3, 1942, American Pipe received a

written contract from the Chemical Warfare Service to produce 25,000 containers for $3,500,000.

Between May 29 and July 29, 1942, Lane had various meetings with Robert P. Archer at which the pending defense contract was discussed. Lane was also informed of the Palos Verdes situation by Archer and that its stock was then selling between 25 cents and 45 cents per share. Archer was interested in the possibilities of profit to be made on the lots owned by Palos Verdes if he could acquire enough of the outstanding stock thereof to gain control. Archer had experience in the past with real estate and escrow transactions, having worked at the California Title Insurance Company, whose president was his father's law partner. He had been an appraiser with Fidelity Savings & Loan. He had had considerable experience in real estate generally. Since 1926, Archer had been a licensed real estate broker. Archer and Lane had formerly been associated in real estate business ventures as early as 1937 or 1938. They had known each other since 1930 or 1931.

On or about July 29, 1942, Lane suggested that Archer join the American Pipe organization as expediter on the defense contract which it appeared certain of getting. Archer wanted American Pipe's assistance in financing the acquisition of Palos Verdes. Lane and his associate Krieger agreed to lend Archer $3,500 for the purchase of Palos Verdes stock. Archer was employed by American Pipe as an "expediter" at $100 per week on August 12,

1942, on which date he was placed on the payroll as an "accountant." Archer had never engaged in accounting work.

On August 18, 1942, an escrow account was opened with the Bank of America in the name of "R. P. Archer" with $1,000 advanced by American Pipe. Ultimately, American Pipe advanced between $6,000 and $7,000 and some 2,500 shares of Palos Verdes stock were obtained by Archer through the escrow procedure. This procedure was originally employed so that American Pipe could have control of the Palos Verdes shares should Archer fail to go through with his deal. At the time the escrow account was opened, Archer personally was without funds, had alimony commitments, and was very close to being "broke."

The formal offer to the then owners of Palos Verdes stock was made in a mimeograph form letter dated August 18, 1942, reading in part as follows:

> To the Preferred Stockholders of Palos Verdes Estates, Inc.:
>
> I hereby offer to purchase all of the outstanding preferred stock of Palos Verdes Estates, Inc., at a price of two dollars ($2.00) per share. This offer is good for fifteen (15) days from date hereof, and unless I can purchase seventy per cent (70%) of said stock within said time, I reserve the right to cancel this offer. If you desire to sell please sign

the acceptance provided below, endorse your certificate or sign the attached stock power, and forward the same together with the stock to Bank of America, Escrow Department, Redondo Beach, California, with the instructions provided below.

. . . . . .

R. P. ARCHER,
Nominee.

Archer's efforts to obtain Palos Verdes stock were greatly aided by E. B. Haggot, the then president of Palos Verdes. Haggot had long been a close friend of Archer's and was personally indebted to him for many past favors and accommodations. At the time the escrow account was opened, there were unpaid and past due taxes on the lots owned by Palos Verdes totaling $80,000 to $100,000. There were about 3,500 shares of Palos Verdes stock outstanding. It was Archer's opinion that if he could acquire 70 per cent of such shares, then, by amending the Articles of Incorporation to allow levying an assessment against the stock, the recalcitrant stockholders would be forced to sell and complete ownership of the corporate structure could be obtained.

Having lost title to all its remaining real estate assets by reason of nonpayment of Los Angeles county taxes for the year 1931-32, and tax deeds therefor having been given by the tax collector to the State of California on July 1, 1938, Palos Verdes, on July 27, 1943, instituted an action in the Superior Court of the State of California against

the State of California and other taxing authorities to set aside the tax sales and tax deeds with respect to 695 lots. On August 2, 1943, the Court entered an interlocutory decree based upon a stipulation of the parties concerned, and set aside the tax sales and tax deeds to the lots involved in such action. The decree restored the rights of redemption free of interest, penalties and costs, but limited the extension of time so to redeem by requiring payment of all such delinquent taxes, as corrected, to be made within six months after the decree became final.

More than a month before the commencement of the tax title redemption action, a sufficient percentage of shares had been acquired to enable the amendment of the Articles of Incorporation of Palos Verdes so as to permit the levying of assessments upon the stock of Palos Verdes; and, at a special meeting on June 23, 1943, the board of directors of Palos Verdes adopted a resolution to this end. On August 26, 1943, an assessment of $40 a share was levied and the resolution, which so levied the assessment, provided for a certain day, September 27, 1943, for payment of such assessment, and further provided and fixed the time at which delinquent stock would be placed on sale or forfeited if unsold. The date originally selected for sale or forfeiture of Palos Verdes stock, October 15, 1943, was postponed until December 2, 1943.

None of the holders of record of Palos Verdes offered to pay the assessment of $40 plus five per cent delinquency penalty on each share of stock

held by them. The only person to appear and bid upon any portion of stock offered at the assessment sale was Archer who bid upon and purchased 96 shares of stock, held by seven individuals, for a total of $4,032. In bidding upon the 96 shares, Archer was acting for American Pipe and the funds used by Archer to purchase such shares were furnished to him for that purpose by American Pipe. Title to the 96 shares bid in by Archer was taken by Archer in his own name. The shares purchased through escrow and at the assessment sale constituted all of the outstanding stock of Palos Verdes. In confirming Archer's purchase of the 96 shares of stock, the directors, on December 2, 1943, the same day as the sale, declared all other shares forfeited for failure of any person to pay the assessment plus penalty thereon.

As a result of the purchase of 96 shares by Archer in behalf of American Pipe, on December 2, 1943, American Pipe became the owner of all the outstanding shares of stock of Palos Verdes. Such stock was obtained by American Pipe at a total cost of $11,248.96, which figure includes the $4,032 paid for the 96 shares purchased by Archer at the assessment sale, as well as the funds furnished to Archer for the purchase of approximately 2,600 shares through the escrow procedure.

Beginning with December 3, 1943, and continuing through the periods involved in these proceedings, Palos Verdes was a wholly-owned subsidiary of American Pipe. Prior to its acquisition by American Pipe, the fiscal year of Palos Verdes ended on

the 28th day of February, whereas American Pipe filed its returns on the calendar year basis. Both taxpayers used the accrual basis of accounting. American Pipe caused Palos Verdes' fiscal year to be changed to the calendar year effective from December 2, 1943, and American Pipe further caused consolidated returns to be filed for the short 1943 period, as well as for the subsequent years here involved.

Beginning on December 23, 1943, Lane caused several advertisements to be run in local newspapers announcing "Liquidation Sale" of "Palos Verdes Estates," of two parcels totaling 437 lots. The advertisements stressed for "postwar construction or to investors." Lane's name appeared in these advertisements.

Shortly after December 23, 1943, Carl H. Dahlberg had a meeting with Lane. Dahlberg and Lane had known each other since 1932, when Dahlberg had first gone to work for Lane. In 1937 and 1938, Lane, Archer, Dahlberg and Roy Dolley had been associated in a real estate venture in Glendale, California. Dolley was attorney for American Pipe during 1942 and 1943, and also represented Palos Verdes in its tax title redemption action brought in the California State Court. At the time Dahlberg and Lane discussed the liquidation advertisements concerning Palos Verdes property and at the time of the hearing of these proceedings, Dahlberg still had an interest in the Glendale venture. Dahlberg is now vice president of American Pipe.

Between 1937 and 1942, Dahlberg had worked for Celotex Corporation, a corporation in the building materials business. Celotex had licensed Drycembel Houses, Inc. (hereinafter called Drycemble) to use its products. In 1942, Dahlberg was employed by Drycemble as vice president in charge of sales. Drycemble manufactured prefabricated houses. In December, 1943, Dahlberg opened an office for Drycemble in Los Angeles. At that time, that corporation was concerned exclusively with war housing projects, building materials being restricted to projects connected with the war effort. It was not the policy of Drycembie to acquire, nor had it acquired, any real estate tracts or groups of lots for the purpose of building thereon.

In December, 1943, after viewing the Palos Verdes properties with Lane and others, Dahlberg was permitted to purchase 451 lots for $18,000. In addition, Dahlberg assumed back taxes of about $10,000 on these lots which were to come due two or three months after the original sale to him. The transaction by which Dahlberg obtained title to 451 lots of Palos Verdes did not involve Drycemble but was a personal transaction insofar as Dahlberg was concerned. The sale of the lots to Dahlberg by Palos Verdes with the approval of American Pipe was not a cash transaction. Dahlberg gave therefor his personal, four-year, 5 per cent note dated December 28, 1943, in the amount of $18,000. Shortly thereafter, when the taxes on lots obtained from Palos Verdes by Dahlberg became due under the stipulated Court decree of August 2, 1943, Palos

Verdes advanced the funds to Dahlberg to enable him to pay such taxes, for which Palos Verdes received his personal four-year, 5 per cent note dated April 7, 1944, in the amount of $9,884.83. At no time did Dahlberg make any cash payments to Palos Verdes in connection with the lots obtained by him.

Some four years later, on January 28, 1948, Dahlberg reconveyed by grant deed to Lane personally and not acting for or on behalf of either American Pipe or Palos Verdes the lots remaining in Dahlberg's name which had not been lost for taxes. A contemporaneous agreement between Lane and Dahlberg recited that Dahlberg retained a contingent monetary interest in the lots deeded to Lane if Lane were able to sell them in excess of a stated amount; otherwise Dahlberg retained no legal or equitable interest in the lots. Under this agreement, the sales proceeds, as received, and only if and when any sales were made, were to be first applied to delinquent taxes, penalty assessments, and other accruals and not until after such applications were proceeds to be applied on the Dahlberg notes. In December, 1943, at the time Dahlberg obtained the lots from Palos Verdes, he was unable personally to supply any funds for them. In January, 1948, at the time Dahlberg deeded the lots back to Lane individually, Dahlberg was unable to supply funds for taxes. In addition to these lots, Lane personally bid in for his own account at public sale held in 1947, 197 lots, some of which included lots previously forfeited by Palos Verdes.

Two days following the sale to Dahlberg of the aforementioned 451 lots, Palos Verdes, on December 30, 1943, executed and delivered a grant deed to Dahlberg, and on the same date Dahlberg's wife executed a quit claim deed to him so that he became the sole owner. The following day, December 31, 1943, the deeds were recorded.

The basis to Palos Verdes of the lots thus sold to Dahlberg in 1943 was $250,781.80, and the resulting loss was $232,781.80. This loss plus other deductions and costs was reflected on the consolidated returns filed for the short period from December 3, 1943, to December 31, 1943, by American Pipe and Palos Verdes as an operating loss of Palos Verdes.

On January 15 and 16, 1944, American Pipe caused the balance of the lots remaining after the Dahlberg sale to be put up for public auction. The public auction was under the direction of Dean S. Bedilion, a well-known local real estate auctioneer. The advertisements for this auction which appeared in local newspapers stressed the fact that the lots to be sold represented: "The Last of the Better Residential Districts in Southern California." The lots which were sold at auction netted $16,185 after costs of sale. The basis to Palos Verdes of the lots sold was $183,797.91. The resulting loss of $167,612.91 was reflected on the consolidated returns filed for 1944. Some additional lots were sold at private sales, after the date of the auction, some of them for around $500 each. The remainder of the lots not redeemed or sold by Palos Verdes was lost un-

der the terms of the Final Decree of the Superior Court entering judgment to quiet title in the State of California. This Decree was entered on May 15, 1944. Final judgment in favor of Palos Verdes on all lots redeemed by payment of delinquent taxes was entered on March 16, 1945. This judgment in favor of Palos Verdes, on all lots redeemed, operated for the benefit of its grantees, inasmuch as it no longer owned any lots in Palos Verdes tracts.

Subsequently, in 1947, the State of California put up for sale some of the lots unredeemed and lost by Palos Verdes. At this sale, Lane personally bought for his own account as many lots as he could afford to purchase at that time and now owns altogether approximately 300 lots.

At the outset of its attempted performance of the contract with the Chemical Warfare Service, American Pipe encountered serious trouble and experienced many problems with the manufacture of lethal gas containers. Such trouble consisted of problems with the heats and designs of the furnaces, specification gauges, obtaining priorities to and locating material, in building the new plant at Alhambra, and labor and inspection troubles. The inspection trouble continued to the end of the contract. None of the containers which American Pipe completed were accepted for delivery by the appointed inspectors under the contract, but were placed in a suspense area for subsequent reinspection by a board of military men. American Pipe had not maintained the schedule called for under the con-

tract, partly through its own fault and partly because of conditions over which it had no control.

About a week prior to September 29, 1943, Lane heard that the Chemical Warfare Service contract was to be terminated and on that date he was notified in writing that the contract was terminated at the necessity and convenience of the Government, except that 300 containers should be prepared for acceptance by the Government. A separate letter of the same date contained a request that American Pipe submit, as soon as possible, data to serve as a basis for a settlement of the amount due American Pipe by reason of the termination, such as costs, proposals for a negotiated settlement, etc. The reason for the Government's termination of the contract was that a new type of lethal gas had been developed and that the American Pipe containers were not needed for such new type of gas.

On October 14, 1943, Lane wrote a letter in answer to that of the Chemical Warfare Service of September 29, 1943, in which he estimated that American Pipe's investment in the contract as of such date was approximately $1,290,000. This amount included a "V," or Government guaranteed, loan with the Federal Reserve Bank for $1,020,000, about $100,000 of which had been used for purposes other than this contract. Lane concluded that American Pipe had invested approximately $368,000 in addition to borrowed funds. Lane also requested urgent consideration of the matter inasmuch as American Pipe had its accounts receivable assigned to the bank under the requirements of the

"V" loan was without operating funds and for the further reason that American Pipe had a substantial backlog of war work.

The cost figures used by Lane included sums borrowed from the bank which had been used by American Pipe for the erection of American Pipe's new plant at Alhambra to manufacture the containers. After the figures were compiled later, in October, 1943, American Pipe put in a claim, as requested and as a result of the contract termination at the convenience of the Government, in the amount of $1,252,000. Toward the end of 1943, final agreement as to a sum in the amount of approximately $1,050,000 was reached between American Pipe and the Government. American Pipe's separate Profit and Loss statement for 1943, per returns, reflected a net operating loss from the contract of $116,240.30 and, after adjustments for other deductions, total income of $339,560.36 was reduced to a net profit of $16,880.52 for 1943.

On November 25, 1943, Lane wrote a letter to the board of directors of American Pipe, as follows:

November 25, 1943.

Board of Directors,
American Pipe & Steel Corporation,
230 Date Avenue,
Alhambra, California.

Gentlemen:

Last May, Robert P. Archer wrote us regarding the Palos Verdes Estates, Inc. and a copy of that

letter is attached hereto. Of course, at that time we were not interested in his proposition, but during the interim I have occasionally discussed his situation with him and have followed the activities of the company.

Archer's original plan was to acquire controlling interest in the company in order to elect a new Board of Directors, which would seek to rehabilitate the company in the real estate business. The present Board of Directors, however, attempted this rehabilitation by making the stock assessable and wanted the stockholders to put up sufficient money to pay the taxes and proceed with the development and/or sale of its properties. The plan failed and Archer does not have the funds to proceed with his original plans, therefore, he has informally proposed that we pay him his costs for his interest in the company and in such event he will seek to acquire the rest of the outstanding stock. This would give us Palos Verdes as a wholly owned subsidiary for approximately $13,000.00.

In the exhaustive study which I have made, I find that the lots owned by the company come under three classifications:

(1) Represents approximately 447 lots in the Lunada Bay Area. All lots in this are contiguous.

(2) Represents approximately 315 lots located in the uppermost part of the tract and covers about 115 acres. All lots in this area are contiguous.

(3) Represents approximately 235 to 250 lots scattered throughout the tract.

There are approximately 11,000 lots originally subdivided in the subdivision owned by Palos Verdes Estates, Inc. There is only one real estate broker doing business at the present time in the City of Palos Verdes, which leaves room for another live wire real estate company for post-war development.

As you know, I have been a real estate broker for a number of years and am thoroughly familiar with the problems arising in the real estate business, as well as the profits to be gained.

The American Pipe & Steel Corporation has many activities in which the control of a real estate company having powers broad enough to engage in other lines of business would be a distinct advantage. In this connection, I will list below several of these advantages which we have discussed informally many times.

(1) In connection with our water pipe and casing business, we have often lost large sales when competitors had an "in" with the developer of a subdivision or could have taken property as part payment for the pipe and well casing.

In the development and sale of the Palos Verdes properties and other real estate put into the company, we could tie the sale of pipe and casing in with the sale of the property.

When subdivision developers (as we have seen in the past) are under-financed, we could buy part

of the property as our security, and after supplying the pipe and well casing, could realize our profit as the subdivision was sold.

(2) In connection with our oil well equipment business, we have often seen competitors take leases and also purchase real property outright, thereby being in a position to tie in the sale of their oil field equipment with the leasing of the properties to the oil companies. This is quite an old procedure in California and Texas, and if we owned Palos Verdes, oil properties could be taken by them for leases or sub-leases to oil companies who would use American Pipe's products.

(3) For post war, Celotex Corporation has approached us informally on the matter of handling the sale and erection of steel houses which have been designed by the Pierce Foundation in cooperation with the Republic Steel Corporation and the Celotex Corporation. If we had the Palos Verdes Estates, Inc. or some subsidiary real estate company, it would provide a controlled outlet for fostering the development of sales of steel houses. Whether or not we make a deal with Celotex or others, I believe that the steel houses will be a very lucrative post-war item, and the American Pipe should be interested in the fabrication and erection of these houses in one way or another.

(4) In connection with the manufacture of propane and other liquefied gas containers, we have seen various distributors in the east, and particularly Ernest Fannin in Arizona, build very lucrative busi-

nesses by loaning storage equipment to consumers and thereby controlling the sale of their liquefied gas. This, as you know, enables the liquefied gas distributor to charge from 1c to 3c a gallon more for his product than is charged by distributors having uncontrolled outlets and when the consumer owns his own storage equipment.

You are also familiar with the fact that we have often considered informally starting the distribution of liquefied gases to enhance the volume of containers. If we were to acquire Palos Verdes, a number of the lots could be set aside for development and containers would be furnished the purchasers of houses in the area, and Palos Verdes could distribute liquefied gas instead of running gas lines to the areas which do not have gas lines. This particular area would be a very good one in which to start the distribution of liquefied gases because there are approximately 20,000 acres undeveloped in which natural gas lines have not yet been laid. During the next 10 or 15 years a good part of this property is likely to be developed and built up.

Inasmuch as we would want to start in the distribution business in a small way, one of the areas now in Palos Verdes Estates, Inc. presents an ideal place to start with a very small initial investment.

I, therefore, propose that the American Pipe & Steel Corporation purchase the Palos Verdes Estates, Inc. for the purpose of handling all of American Pipe's activities outside of the actual fabrica-

tion of steel products. I propose that a Board of Directors be elected which has the experience and ability to engage the company in the real estate business and any other profitable activities which will directly or indirectly benefit the American Pipe & Steel Corporation.

I would propose to this Board that the Area No. 3 be sold at public auction, over and above taxes, to raise sufficient funds to pay off the taxes on the other two areas, and that if sufficient money were not raised in this method, that one of the other areas also be sold. However, the contiguous lots should be sold at a private sale rather than at auction. This would leave the company with less property, but it would be free and clear of taxes which would enable Palos Verdes to be a factor in the real estate business in Southern California.

I would also propose that American Pipe (in the event that they acquire Palos Verdes) sell to Palos Verdes all of the rejected containers from the Chemical Warfare Contract at a price above what we have been offered by the junk dealers.

This would enable Palos Verdes to enter into the distribution of L. P. Gas.

Yours very truly,

AMERICAN PIPE & STEEL CORPORATION,

/s/ JACK LANE,

JACK LANE,
President.

JL:BF

On the same date, the board of directors of American Pipe adopted the following resolution:

Resolved, That Jack Lane, the president, be and he is hereby fully authorized and empowered to negotiate with Robert P. Archer and others for the acquisition of control of all outstanding stock of Palos Verdes Estates, Inc., and he is further authorized and fully empowered to do and perform all acts and things necessary or advisable in his judgment in connection therewith.

Subsequent to American Pipe's acquisition of Palos Verdes, as above described, Palos Verdes built no houses, made no improvements, and did not subdivide.

On December 10, 1943, the board of directors of Palos Verdes pursuant to a recommendation by Lane adopted the following resolution:

Resolved, That Jack Lane, the president, be and he is hereby authorizec to purchased from American Pipe & Steel Corporation the rejected containers and shells for the purpose of using them in connection with the distribution of propane and/or butane, for the sum of approximately $15,000.00, upon such terms of payment as may be agreeable to American Pipe & Steel Corporation; and Jack Lane is further authorized and empowered to do and perform all other acts and things necessary or advisable in his opinion to conclude this transaction; and he is further authorized and directed to investigate various propositions relating to the dis-

tribution of liquefied gas in the Palos Verdes area and elsewhere in that general location.

On the same date, American Pipe's board adopted the following resolution:

Resolved that this company sell to Palos Verdes Estates, Inc. for the sum of approximately $15,000 all of the rejected containers and shells if and when the same become available for such sale, and any two officers of the company are hereby fully authorized and empowered to do any and all things necessary and expedient for the purpose of concluding this transaction, and they are further authorized to fix the terms and conditions of sale and the terms of payment.

The aforementioned containers were to be used in the distribution of butane and propane in the area around the properties owned by Palos Verdes. This plan for the use of the tanks was subsequently abandoned and Palos Verdes disposed of the tanks during 1944 and 1945 at a profit of $80,000 or more.

The total loss on abandonment or forfeiture of Palos Verdes' assets during 1944 was $117,080. This loss was reflected on the consolidated returns filed by American Pipe and Palos Verdes for the calendar year 1944.

As at December 31, 1943, exclusive of its so-called commercial work, American Pipe had a backlog of prime Federal Government contracts amounting to $850. This represented the remaining backlog on a total of such prime contracts awarded in 1943 in

the amount of $224,648.71. It did not include the Chemical Warfare Service contract inasmuch as that contract was awarded in 1942 and had been terminated in September, 1943. There was no other contracts awarded in prior years. Likewise, such total did not include the backlog of subcontracts for war materials not completed at December 31, 1943, in the amount of $123,753.29.

As at December 31, 1944, American Pipe had a backlog of prime Federal Government contracts amounting to $1,006,275.04 on total contracts awarded during the year, of $1,892,144.92. Out of this total substantially all, or $1,747,745.42 of such contracts, were awarded on or after July 15, 1944. The largest contract awarded prior to May 12 was for $1,800. This total did not include subcontracts for war materials not completed at December 31, 1944. The backlog of such contracts at that date was $14,213.90.

On the basis of the foregoing facts, we arrive at the ultimate conclusion that the evidence does not establish that respondent erred in holding that the evasion or avoidance of income or excess profits taxes by securing the benefits of deductions, credits or other allowances which it would not otherwise enjoy was the principal purpose for which American Pipe acquired the capital stock of Palos Verdes.

Opinion

Van Fossan, Judge:

Fundamentally, the question to be resolved is whether the principal purpose motivating American

Pipe's acquisition of Palos Verdes was the evasion or avoidance of income or excess profits taxes through obtaining thereby tax benefits otherwise unavailable to it within the proscription of section 129, Internal Revenue Code of 1939.[1] Respondent has so determined. Based upon such premise, he has further determined that Palos Verdes was not a member of an affiliated group within the meaning of section 141 of the 1939 Code,[2] and that, therefore,

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[1]Sec. 129. Acquisitions Made to Evade or Avoid Income or Excess Profits Tax.

(a) Disallowance of Deduction, Credit, or Allowance—If (1) any person or persons acquire, on or after October 8, 1940, directly or indirectly, control of a corporation, or (2) any corporation acquires, on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately prior to such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income or excess profits tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then such deduction, credit, or other allowance shall not be allowed. * * *

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[2]Sec. 141. Consolidated Returns.

(a) Privilege to File Consolidated Income and Excess-Profits-Tax Returns—An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making consolidated income and excess-profits-tax returns for the taxable year in lieu of separate returns. The making of consolidated returns shall be upon the condition

the filing of consolidated returns by American Pipe for the periods involved was not permissible under such section.

It is the position of petitioners that, as of the time American Pipe made the acquisition in dispute, the principal motivating intent behind such acquisition was the use of Palos Verdes for various legitimate business purposes. In support of this contention, petitioners point out that in December 1943, at which time American Pipe acquired complete ownership of Palos Verdes, the former's war contract had previously been cancelled and that it was thought desirable to use Palos Verdes as an outlet for the disposition of surplus gas tanks which had been manufactured under such contract, and which were going to be left in American Pipe's possession. Petitioners further point out that the management of American Pipe was of the opinion that Palos

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that the affiliated group shall make both a consolidated income tax return and a consolidated excess-profits-tax return for the taxable year, and that all corporations which at any time during the taxable year have been members of the affiliated group making a consolidated income-tax return consent to all the consolidated income and excess-profits tax regulations prescribed under subsection (b) prior to the last day prescribed by law for the filing of such return. The making of a consolidated income tax return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated returns shall include the income of such corporation for such part of the year as it is a member of the affiliated group. * * *

Verdes presented an opportunity to obtain an outlet for pipes, casings, and other products manufactured by American Pipe. Finally, it is urged that it was deemed desirable for American Pipe to acquire another corporation for the purpose of carrying on certain auxiliary activities, such as owning oil properties and enterprises of other kinds, which were in competition with those to whom it was selling its products; and that Palos Verdes is, in fact, now engaged in just such sort of an operation under a different name.

The legislative history of section 129 was explored by us in Commodores Point Terminal Corporation, 11 T.C. 411. Briefly, the Congressional purpose was to halt the growing practice of avoiding taxes by the expedient of buying corporations having past, present or prospective losses, deficits, or large excess profits credits with the objective of reducing income or excess profits taxes. Of course, the statute was not intended to upset bona fide transactions or acquisitions where the proscribed intent is not present. See S. Rept. No. 627, 78th Cong., 1st Sess.; H. Rept. No. 871, 78th Cong., 1st Sess. Thus, to restrict its application to the situations for which it was intended, the statute specifies three basic prerequisites which must be satisfied. The taxpayer must have (1) acquired on or after October 8, 1940, control of a corporation or acquired, on or after such date, directly or indirectly, corporate property which takes as its basis, in the hands of the transferee, the transferor's basis; with (2) the principal purpose or intent underlying such acquisition of

evading or avoiding income or excess profits taxes; by (3) securing the benefit of deductions, credits or allowances which the taxpayer would not otherwise enjoy.

In the instant case, petitioners do not and cannot deny that American Pipe acquired control of the corporate property of Palos Verdes, subsequent to the specified date, nor that, as an incident thereof, it stood to enjoy tax benefits not otherwise available to it. As above observed, petitioner denies, however, that the tax benefits were the principal consideration or motivating purpose behind the acquisition.

Although intent is a state of mind, it is nonetheless a fact to be found, as other facts are found—by a study of the entire record and the inferences to be drawn therefrom. The Commissioner having determined that the tax benefit to be gained was the principal purpose behind the acquisition, it was petitioner's burden to prove that such determination was erroneous. After a careful study of the record made, we have concluded that petitioner has not successfully carried his burden of proof. We have accordingly so found.

Decisions will be entered under Rule 50.

Served November 30, 1955.

The Tax Court of the United States
Washington

Docket No. 28539

AMERICAN PIPE AND STEEL CORPORATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the Court's Findings of Fact and Opinion filed November 30, 1955, the parties herein having filed an agreed computation of tax on February 24, 1956, it is

Ordered and Decided: That there are deficiencies in income tax and excess profits tax, as follows:

Year	Deficiency Income Tax	Deficiency Excess Profits Tax
1944	$23,504.02	$34,955.02
1945	17,753.50	84,299.14
1946	53,264.70	

/s/ ERNEST H. VAN FOSSAN,
Judge.

Entered February 28, 1956.

Served February 29, 1956.

Before the Tax Court of the United States

Dockets Nos. 28539 and 28565

AMERICAN PIPE AND STEEL CORPORATION and PALOS VERDES ESTATES, INC.,

Petitioners.

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

TRANSCRIPT OF PROCEEDINGS

Tuesday, June 1, 1954.

The above-entitled matter came on for hearing, pursuant to notice to the parties, at 1:30 o'clock p.m.

Before: Honorable Ernest H. Van Fossan, Presiding.

Appearances:

ALVA C. BAIRD, ESQ.,
THOMAS A. BAIRD, ESQ.,
WILLIAM A. CRUIKSHANK, JR., ESQ.,
458 South Spring Street,
Los Angeles 13, California; and

ARTHUR J. HAIR, ESQ.,
453 South Spring Street,
Los Angeles 13, California,

For the Petitioners.

R. E. MAIDEN, JR., ESQ.,
CHARLES H. CHASE, ESQ.,
R. B. SULLIVAN, ESQ.,
(Hon. Daniel A. Taylor, Chief Counsel, Internal Revenue Service),

For the Respondent.

The Clerk: Dockets Nos. 28539 and 28565, American Pipe and Steel Corporation, et al. Will the attorneys please state their appearances?

Mr. Baird: For the petitioners, Alva C. Baird, Arthur Hair, Thomas A. Baird; Mr. Cruikshank will be here later.

Mr. Maiden: The respondent, through its attorneys, R. B. Sullivan, Charles H. Chase, R. E. Maiden, Jr. announces ready.

If the Court please, at this time I don't know whether it is more appropriate now or after the opening statement, but I should like to move, on behalf of the respondent, that the witnesses be excluded under the Rule, those except the officers of the petitioner corporation.

The Court: That may be done.

Mr. Baird: That rule is to be in effect immediately, or may they remain until the opening statements are made?

The Court: They may remain for the present.

Mr. Baird: Thank you.

The Court: You may proceed.

Mr. Baird: Before making the motion for consolidation, may I call the Court's attention to the fact that the name of Palos Verdes Estates, Inc.

has been officially changed, and we have, pursuant to a stipulation which will be filed [4-5*] here, set forth that fact in our stipulation; and the official name of the Palos Verdes Estates, Inc. now is W. G. Kreiger Company. However, in our stipulation, for the purposes of convenience, we will refer to it by its original name as Palos Verdes Estates, Inc.

I will say to the Court that we do have here certified copy of the amendment to the articles of incorporation and a certificate from the Secretary of State, and if your Honor thinks that it is necessary to more strictly comply with Rule 23(b) of the Court's rules in regard to filing a motion, we shall be happy to do so; but we have covered it by stipulation and unless the Court thinks otherwise, we will not encumber the record with that motion.

The Court: Just proceed.

Mr. Baird: May it please the Court, before I make my statement, the Clerk has called my attention to the fact that we should make a motion to consolidate these proceedings. I am inclined to think that that was heretofore done, but I am not sure, and I make the motion now, that these two proceedings be consolidated for hearing, briefs and other disposition.

The Court: That may be granted.

Mr. Baird: This proceeding involves two corporations, American Pipe and Steel Corporation, which we shall refer to as American Pipe, and Palos Verdes Estates, Inc., which we shall refer to

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

as Palos Verdes, the name of the latter having [6] recently been changed, as indicated.

The taxable years involved are the years 1944, 1945 and 1946. The deficiencies asserted against American Pipe are $213,776.38. Those are total deficiencies. And against Palos Verdes, $21,305.05.

The issue, as it boils down to this moment, when we have, after a long and arduous trail, reached the point of trial in these cases, resolves itself to a question of revolving around the figure of consolidated returns by these two corporations and by the application of Section 129 to the facts as they will be presented in this case. In other words, as a result of our extended negotiations with government counsel, it has been agreed that all other issues that were raised in the 30-day Letter, in the 90-day Letter, and in the pleadings and in the amended pleadings, in the respondent's amended answer, are now eliminated, and that we have no question of basis—that we have only the question to decide as to whether or not these corporations under the facts as they will be unfolded here, had a right to file consolidated returns and to whether or not American Pipe and Steel was entitled to the benefits inuring to it by reason of its acquisition of the stock of Palos Verdes.

The evidence will show, and in fact it is included in our stipulation, that American Pipe and Steel Corporation was incorporated on May 27, 1929, in Nevada. Palos Verdes was [7] incorporated under the laws of the State of California on March 11, 1935.

In order that we may have a comprehensive picture and understanding of the situation, I feel it is going to be necessary for me to go into some detail in my opening statement by way of explanation as to what led up to this situation in the year 1942 and the latter part of '43, which ultimately resulted in the stock of Palos Verdes being acquired by American Pipe and Steel.

The Palos Verdes Estates, as your Honor may know by reason of having been here on numerous occasions in connection with hearings, both here and at Long Beach, is a residential project down on the Pacific Ocean just north of Long Beach and Wilmington and south of Redondo Beach. The project was started in 1921 on the 12th day of December. On that occasion, a man by the name of E. G. Lewis, who was trustor, initiated or originated a trust with the Title Insurance and Trust Company, as trustee.

The purpose of that original trust was to acquire some 16,000 acres of land for subdivision and selling of high class exclusive residential property.

Subsequently, there was an amendment to that trust, and the Commonwealth Trust Company, a corporation, succeeded the Title Insurance and Trust Company as trustee, and the trust acquired 3,200 acres of the 16,000 originally [8] contemplated.

There was subsequently a change in the trustee. The Bank of America, formerly the Bank of Italy, became a successor trustee, but that perhaps is not material to our project.

The financing and the raising of money to acquire this 3,200 acres was obtained through the underwriting subscribers or by underwriting subscribers to convertible and unconvertible notes of the trustor. Convertible notes gave the subscribers a right to select a lot providing the selection was made within a time limit, and to apply the face of the note on the purchase of the lot.

Now, that this was a venture of gigantic proportions is indicated by the fact that there were sold of these notes $1,350,000. The trust continued to operate as a trust, as a real estate syndicate, and while it is not material to our case, as a matter of history, it may be said that the government decided that it, along with many other real estate subdivisions operating in this area at that time, were in fact and in effect corporations, that is, that they were associations. And a case did appear on the calendar in Long Beach in September or October, 1933, and the record indicates that your Honor presided at that proceeding, and that a disposition was made of that case.

Now, that has nothing to do with the matter about which we are concerned today, but I merely mention it as a matter of interest. [9]

The matter was disposed of by stipulation.

So that these many years later we find that we are back here again with some of the problems of Palos Verdes Estates, although in a different form. The financing of this gigantic project was one that gave considerable trouble, and finally the trustee concluded that it would be necessary to raise a

large amount of money, and they worked out a plan whereby the property would be deeded to an individual, and that individual would set up a mortgage trust arrangement with, I believe, the Union Bank and Trust Company as trustee, and they would sell 6½ per cent gold bonds.

Now, that was done in June, 1928. These bonds were to be due on June, 1933.

It was contemplated that there would be a million dollars worth of these bonds issued and sold. Title to substantially all of the property was conveyed to one Carol Hannum for the purpose of executing this mortgage, as I indicated, to the Union Bank and Trust Company, trustee.

Later it developed that these bonds were in default. The interest hasn't been paid; the taxes hadn't been paid on the property, and the project was in financial distress.

Efforts were then made by some substantial portion of the bondholders to force the Union Bank and Trust Company, as trustee, under the mortgage bond issue to foreclose on the property. So that they could get their money out of it or get [10] what percentage was available out of it. This foreclosure proceeding was started, and almost immediately a suit was instituted in the Superior Court of the County of Los Angeles, which suit was sponsored or promoted by a man by the name of Jesperson who had been selected by the noteholders of the original financial arrangement, or by their successors; the noteholders contended that the bond issue was illegal and void, and that the bondholders had

no priority at all over the liens, the claims, and the rights of the noteholders.

In the meantime, Mr. E. G. Lewis, the original sponsor of this project back in 1921, had gone into bankruptcy, and prior to the time he had gone into bankruptcy, he had made certain commitments to various individuals and various organizations, who felt that they had some rights and some interests in the project by reason of the rights they had acquired from Mr. Lewis. So the trustee in bankruptcy, Mr. E. A. Lynch, joined in this legal battle royal, so to speak, and we found ourselves confronted with a suit in the Superior Court, in which the bondholders, the trustee in bankruptcy, the noteholders, and various interested parties, the Bank of America, trustee, under the real estate trust; the Union Bank and Trust Company, a trustee under the mortgage trust, were all involved.

The solution to it seemed to be almost impossible, but, fortunately, perhaps, counsel for the respective parties [11] were able to work out a long and involved compromise settlement, which I will not undertake to read to your Honor, and which it may not be necessary to present here in court, because this is merely explanatory and is merely history; but the net result of that arrangement was, and as a part of the compromise arrangement which was then worked out, Palos Verdes Estates, Incorporated, was formed, and under the provisions of that agreement the bondholders were to receive all the preferred stock, and the stockholders, that is, the noteholders, were to receive a certain amount of

common stock, and the other parties in interest were to receive certain rights under the new corporate reorganization.

Under the provisions of the articles of incorporation, it was provided that the owners of the preferred stock would be entitled to elect all of the directors at the Palos Verdes Estates, Inc., except one. The one would be elected by the noteholders.

Now, that suit to which I referred was started in 1934 and, as I have indicated before, Palos Verdes Estates, Inc., was incorporated under the date of March 11, 1935.

So that we find that the origin of the present corporation, the one that is now before this court for a determination of its tax liability, was March 11, 1935.

Now, we must keep in mind, of course—the Court, I think, will take judicial notice of the fact—that that [12] was a period of depression, that we were in a difficult period of time. Money was hard to get; cash was almost impossible to get; and it was difficult and, in fact, it became impossible for this company to pay the taxes on this property, that is, the county, the city taxes, taxes to the school districts, and other taxes of various kinds. And, as was true in other parts of the State of California and in the County of Los Angeles, large blocks of lots were lost to the State of California because they were unable to make the payment on the taxes, and, ultimately, all of the lots were lost to the State of California because, under our law, if the taxes are not paid within a certain time, they are auto-

matically sold to the State of California; and then there is a certain redemption period within which they may be redeemed by the lot owners by the payment of these taxes.

The situation became so acute, not merely on account of this taxpayer, but other landowners, and the taxing authorities became so concerned about the fact that there was such a large percentage of land in this county, in this state, that had gone off the tax rolls, that it was felt that something should be done to relieve the situation. And there were various moratorium acts passed, extending the time within which taxes could be paid; and, I think, extending the time within which redemptions could be made.

Then, in connection with this particular [13] project—and there were some other projects that have no relation to this, which were also in a like situation—it was determined, or, at least there were those who felt, upon investigation, that the assessment of the taxes against the Palos Verdes Estates property was illegal and void, for the reason that the proper rate of assessment had not been made. I think actually it figured out that they had been charged one cent more, or six or seven dollars a lot more than they should have been charged, and legally could have been charged under the law. I may be wrong on the figures, but that is immaterial.

As a result of that, there was an action brought by Palos Verdes Estates, Inc., started I believe in July 27, 1942—or is it '43?

Mr. Hahr: '43.

Mr. Baird: '43. This suit was against the State of California, the County of Los Angeles, the City of Palos Verdes, the School District of Palos Verdes, certain water districts and various and sundry other political subdivisions of the State of California. There is no dispute about that, because that will be an exhibit which will accompany our stipulation of facts which will be offered here.

As a result of that suit, a stipulation was entered into, that is, a stipulation of facts. It was submitted to the Superior Court for consideration, and the Superior Court some time in August, I believe—I am not quite sure of the [14] exact date—but about that time entered its decree, determining that the assessment was illegal and that the sale to the State of California was invalid.

However, pursuant to the stipulation, apparently, it was provided in that decree that Palos Verdes or any of the parties in interest would have six months from the date of the interlocutory decree, which, as I recall, was August 2, 1943, within which to pay the taxes and redeem the property.

Now, final judgments and decrees were subsequently entered; one in favor of Palos Verdes and one in favor of the State of California. And the reason that we have two judgments, each in favor of the opposing party, is that certain of the lots were redeemed within the time as provided by the interlocutory decree, and others were not.

So that the State of California did acquire title to some, and the Palos Verdes Estates, Inc., did acquire title to others, and they were redeemed.

Now, that brings us down, then, to 1943.

But I want to backtrack a little to bring in now some of the matters which must be considered by the Court in determining whether what was done by the American Pipe and Steel and the Palos Verdes Estates, Inc., was correct and proper and permissible under the law under the Internal Revenue Code.

Some time in 1937, Mr. Ben Haggott, a young and [15] enterprising real estate man with some considerable experience in that field of endeavor and some experience as an appraiser, was induced for some reason or other to become a member of the board of directors of Palos Verdes Estates, Inc. Very shortly thereafter and, namely, on the second day of February, 1938, Mr. Haggott was elected president of Palos Verdes Estates, Inc., and it fell upon him—it became his responsibility and his duty to do what he could to revitalize that corporation and to save whatever could be saved for the stockholders.

Very early, I think, in his consideration of the matter, he came to the conclusion that there would have to be some form of liquidation, either partial or complete. And I believe that his testimony will be that at first he was trying to save some of it for some of the stockholders and liquidate others out.

And an arrangement was worked out whereby the holders of the common stock did surrender their stock to the trustee.

It is not clear to me at the moment just what the consideration for it was. But that isn't material to

my purpose, either, so I won't dwell upon that. The fact is that after Mr. Haggott became president, the common stockholders dropped out of the picture for one reason or another, and he had to deal with the preferred stockholders. [16]

Various and sundry plans were considered about raising money. It was necessary to raise money for several purposes: One, to develop the property, to continue putting in streets, roads, and improvements of that kind, and to obtain money to pay the taxes which were constantly going on. And various plans were conceived by Mr. Haggott, and finally in his enthusiasm and in his determination to work out a feasible plan, he sought the advice of one Robert Archer, and Mr. Archer will be a witness in this case and is, in fact, in the courtroom at the present moment.

Mr. Archer is a man who had a great deal of experience in the matter of real estates, handling securities, handling financial transactions, and he was a particularly good friend of Mr. Haggott's. In fact, the evidence will show that Mr. Archer assisted Mr. Haggott in various small ways, when Mr. Haggott was in school, and when he got out of school, and when he was trying to get started in business for himself; took him with him on various trips where appraisals of property were being made, so as to give Mr. Haggott the benefit of his experience as an appraiser.

And because of this close personal relationship and also because of the fact that he realized that Mr. Archer was a man of experience, he sought his

advice as to what could be done with reference to the Palos Verdes Estates, Inc., situation, to revitalize it and save something for the [17] stockholders.

As a result of those conferences, and after Mr. Haggott had sought the advice of Mr. Archer, it was determined that some arrangement should be worked out for the acquisition of the stock. And a plan was worked out whereby, if a preferred stockholder would turn in some of his stock, that it could apply on a lot, or maybe two or three lots. And the arrangement was that for each share of stock turned in, that would represent a certain percentage of the cost of the lot; the balance would be paid in cash; and that particular preferred stockholder would be out of the picture and would have the responsibility of paying the taxes on the property, and the corporation would consequently be relieved of that responsibility, further responsibility to that stockholder and further responsibility for that particular lot.

Some time in '42, the exact date of which I do not now remember, but at least prior to July, I should say, of 1942, Mr. Archer began purchasing outstanding shares of Palos Verdes stock, and he had found that the stock was being sold, not on the market, so to speak, but I mean being sold by various individuals at a very nominal price. And he was able to get ahold of a considerable amount of this stock at a very nominal price.

In the meantime, the place of employment that Mr. Archer had at the time, there had been a change

of management or something had taken place so that he was not presently [18] employed, and at or about that time, he met Mr. Jack Lane, president of the American Pipe and Steel Corporation. I do not mean to infer that that is necessarily their first meeting, but at least we know by as late as July in 1942 that Mr. Lane of the American Pipe and Steel Company was endeavoring to get the assistance and help of Mr. Archer as an expediter.

Now, I must digress there for a moment to indicate to your Honor that the American Pipe and Steel Company, being a company engaged in the manufacture of steel pipe and steel commodities of various and sundry kinds was naturally hoping and endeavoring to obtain contracts with the War Department, the Navy for the war effort, so that they could supply some of the commodities that were then in demand.

Some time early in 1942, the exact date of which Mr. Lane will give us here on the witness stand, the American Pipe and Steel had been negotiating with some branch of the Chemical War Services for a contract for the making of containers for lethal gas.

Now, these are large steel containers used in the war effort for the purpose of containing gas. That negotiation by Mr. Lane continued over a considerable period of time, and it was not until about September 3, 1942, that a contract was ultimately obtained.

Mr. Lane knew that Mr. Archer had various contacts. He knew that he had had some experience

in the machine shop [19] business, because he had in fact operated for a time a machine shop, and had some experience in that, not as a machinist, but as one who had a financial interest in it. And he felt that Mr. Archer could be of great help to him in doing all of the little, incidental things that are so important and so essential when you are negotiating for contracts and when you are trying to keep your production up to the proper limit after the contract has been obtained.

The record will show that Mr. Lane and Mr. Archer had at least one conversation—I am not saying that it was the first—on the 29th of July, 1942, at which time Mr. Lane offered to pay Mr. Archer, I think it was $400 a month for this expediting work, and that was not, as I understand it, necessarily a full-time job.

However, Mr. Archer on that occasion told Mr. Lane, and the evidence will so show, that he had been for some time purchasing shares of stock of a company down near San Pedro, which had 700 or 800 lots, and that he felt that if he could purchase enough of those shares, that it would be a good investment, a good speculative investment.

So he refused to go to work for Mr. Lane unless the American Pipe and Steel would advance him a certain amount of money, and, as a matter of fact, I think what he asked for at that time was $2,500 as a loan. And the arrangement was that this loan was to be paid back out of the shares after they had [20] been obtained.

Mr. Lane thought about that for a few days and

apparently consulted with his associate in his business, and Mr. Archer went on the payroll of American Pipe and Steel. He not only did the expediting work but he also proceeded to do what he could with reference to the acquisition of the stock of Palos Verdes. The evidence will show rather close contact at this point between Mr. Archer and his friend, Mr. Ben Haggott, because Mr. Haggott was anxious that something be done that would enable him to ultimately do something for the stockholders, and to pull Palos Verdes out of its troubles.

And there will be certain documentary evidence with respect to that which will be submitted for the consideration of the Court.

It is important, I think, to bear in mind that this relationship started in 1942, that it was in September, 1942, some two or three months after this date in July, which I have mentioned, that American Pipe obtained its contract from the Chemical War Service Department. And then a blow came on October 1, 1943.

Without any notification at all, or any prior indication about it, American Pipe and Steel received a notice that its contract would be cancelled and that the government would accept, I think it was only 300 completed containers.

Now, that left, as of the end of the 1943 and prior to [21] December of 1943, the American Pipe and Steel Company without a war contract, and one which they thought would be perhaps an opportunity for them to make some money. It also left them with, in their inventory, a large quantity of these

containers or tanks for which they at the moment thought they would have no use at all, and thought perhaps would have to be sold for junk.

However, notwithstanding that, on December 2, 1943, Mr. Archer had acquired stock in the Palos Verdes of a substantial amount, and that was ultimately acquired by the American Pipe and Steel, all of which is apparently to the discomfort of the Internal Revenue Service and the government of the United States.

But I want to call your Honor's attention to this significant fact: That the evidence in this case will not show or, rather, the American Pipe and Steel does not claim any right to any benefit from any loss realized and reported by Palos Verdes Estates for any taxable period prior to the date of December 2, 1943, when it acquired this stock of Palos Verdes.

I want your Honor to keep in mind, too, if you will, please, that the evidence will show, though, as of the end of this year, December, 1943, American Pipe and Steel was without a war contract, had lost its war service contract, and it had a very nominal income for that year, an income of some $14,000— [22] less than $15,000—we do not have a situation such as the government counsel may try to have us believe, whereby we had a growing concern, a going concern, if you please, American Pipe and Steel, with a lot of huge war contracts, and contracts out of which they could inevitably and without any question made a substantial amount of

money, acquiring the Palos Verdes Estates, Incorporated, stock.

But we have a corporation that was on the basis of touch and go, so to speak. It had an income that year of only $14,000, and it had just as recently as October lost its most important contract with the War Service Department. So that, as of the time that American Pipe and Steel became affiliated with Palos Verdes, there could not have been any motivating force other than the fact that it could be used for some business purpose.

And, as to that, I want to direct a few remarks:

In the first place, Mr. Lane, who had been president of American Pipe and Steel for a relatively short time—I think two or three years; I may be mistaken about that, but that can be cleared up—had not been in agreement with the management of American Pipe and Steel, and he had always felt that by developing certain fields for their products, that the company could be made a paying concern and a profitable concern. And as he analyzed the situation with reference to Palos Verdes, several things came to his mind. [23]

One was that, here was an opportunity to dispose of this large consignment of several hundred or more of these tanks which had been manufactured for the Army, containers, which had been manufactured for the Army and which were going to be left on the hands of American Pipe and Steel to dispose of by way of junk or in whatever other way they could be disposed of.

Mr. Lane, knowing the situation in Palos Verdes,

and knowing that that was an area, a large part of which did not have gas—facilities of various kinds had not been installed in certain parts of the Palos Verdes area, and, among other things, the area had not been piped or developed for gas—Mr. Lane felt that, by making some slight alterations, perhaps, in these tanks that had already been manufactured, that they could be used for the purpose of butane or propane; that they were sufficiently similar to tanks that had been manufactured for that purpose, that he felt that his engineering department could convert them into that use.

Subsequently, a large consignment of those tanks was sold to Palos Verdes, and I might say that Palos Verdes ultimately, by reason of the fact, that due to the war pressure, was unable to get either propane or butane did sell the tanks and sold them at a very substantial profit, so far as that is concerned.

In addition to that, it was the feeling of Mr. Lane [24] that this Palos Verdes area, which is rather extensive—and we will present here before the hearing is over on this wall or at some other convenient place, a map so your Honor can comprehend the situation visually—that it was an opportunity for them to use pipe and casings of various kinds, such as could be manufactured by American Pipe, and he thought of it as an outlet for the products that he was making.

In addition to that, American Pipe and Steel had to some extent engaged in some activities which, to a layman, at least, were somewhat foreign and

remote to that of a steel company, and Mr. Lane felt that there were some endeavors that they might want to go into which it would not be well for American Pipe and Steel to enter, because they would be in competition with people to whom they were selling their products.

And he wanted another corporation for the purpose of carrying on these auxiliary activities, such as development of oil properties and enterprises of other kinds; as a matter of fact, that has been done, and Palos Verdes today, under its new name of W. G. Kreiger Company, is engaged extensively in ~~that sort of~~ an operation.

So we submit, your Honor, that the evidence will show that the American Pipe and Steel Company, acting through and under the direction of its able president, Mr. Jack Lane, did nothing under the law that was in any sense reprehensible, [25] did nothing under the Internal Revenue Code that the Code does not permit; that he did not have the intent, primary intent of using the Palos Verdes Estates, Inc., as a means of eliminating properties and taxes that American Pipe and Steel might make.

In closing, may I again remind your Honor that the evidence will show, I think, as of the end of 1943—bear in mind that this stock was acquired by American Pipe in December of 1943; it wound up with a nominal income of $14,000. Again, may I state that we are not here contending and have not contended and will not contend that we are entitled to any benefits because of prior losses, so far as

Palos Verdes Estates is concerned. These deficiencies have arisen by reason of the events that transpired subsequent to the date that the American Pipe and Steel became the parent company of Palos Verdes Estates, Inc.

May I inquire of my associate if there is anything I have neglected?

If I may just be permitted to clear up one or two of my statements:

Technically, I was incorrect, I think, in stating that Palos Verdes had lost the lots to the State, and that is due to our procedure. Actually, the suit that was brought was brought to determine that the assessment was wrong; that it had been made on the wrong basis; and that it should be set [26] aside; and the decree of August 2, 1943, did set the sales aside as void, and also eliminated all penalties and interest in connection with it.

With reference to the war chemical contract, my attention has been called to something that I neglected to mention, and that is that not only was there to be no profit, but there was a possible loss of several hundred thousand dollars, and Mr. Lane estimated that that loss might run as much as $300,000.

So that is the situation with which we are confronted as of the end of December, 1943.

There are some other minor things which we will clear up with the testimony, but that in main constitutes our opening statement.

The Court: Mr. Maiden, you may proceed.

Mr. Maiden: If the Court please, I had not in-

tended to go to any lengths into a discussion of what the evidence in the case will show the facts to be, though, in view of the great detail in which Mr. Baird enumerated the factual situation as he understood it, and particularly the injections of inferences and conclusions from certain of those facts, I perhaps may be excused if I take just a few moments in stating what respondent understands the facts to be and what facts will be established as the evidence comes in.

The Court: Take whatever time you need. [27]

Mr. Maiden: Thank you. In the case of American Pipe, which is the principal petitioner, the deficiencies arise by reason of the Commissioner's refusal to recognize the tax benefits which American Pipe claims, by reason of its acquisition of Palos Verdes.

The American Pipe immediately, upon the completion of its activities in acquiring sole ownership of Palos Verdes, it being on a calendar year basis, caused its wholly-owned subsidiary to obtain permission to change its accounting and return. From a fiscal year ending February 28th to a calendar year basis, with the result that the books of Palos Verdes were closed as of December 2, 1943, and its operations, under its new calendar basis for the period December 2, to December 31st were combined through the method of consolidated returns with the operations of American Pipe over its full calendar year 1943; therefore, in 1944, 1945, 1946, the years actually in controversy here, consolidated returns were filed. In all of these years,

1943 through 1953, through the method of consolidated returns, which is provided for by Section 141 of the Code, American Pipe claimed the benefits of the large operating losses, carry-overs of operating losses, a considerable invested capital for excess profits tax purposes, and, in fact, such benefits that in 1944, notwithstanding the benefits of a net operating loss carryover in Palos Verdes in the amount of $215,639.88, still had net income in 1944 of [28] $96,515.44.

In 1945, notwithstanding the benefit of a carryover loss of Palos Verdes in the amount of $322,814.46, American Pipe still had a net income, on which it had to pay taxes of $144,909.04.

In 1946, through the same benefits and receiving a net loss carryover from Palos Verdes in the amount of $107,174.58, its business was yet good enough to return the net income of $316,644.17.

Now, those net income figures of American Pipe which I have mentioned are not after taking the benefits of Palos Verdes carryovers. I was mistaken in that. They represent the net income of American Pipe for those years from its own separate operations.

The carryover loss figures of Palos Verdes, which I have mentioned for the respective years, are correct. The tax result claimed by American Pipe through its method of filing consolidated returns, notwithstanding these net profit figures which I have previously given of the separate operations of American Pipe for the years, resulted in the reporting of a net loss in 1943 of $228,000 plus; in

1944, of $322,814.46; in 1945, of $127,000 plus. However, in 1946, even after the great bonanza resulting from the acquisition of Palos Verdes, it still had taxable net income under this consolidated return basis of $168,000 plus. The other figures [29] I believe I made it clear for 1943, '44, and '45 were huge net loss showings.

Now, there is one thing, while I am thinking about it, that I want to clear up, and that is this: Mr. Baird, not intending to misstate any circumstance in the case, which I personally know he would never do, stated that the American Pipe does not claim and never has claimed any benefits by reason of its acquisition of Palos Verdes for the year 1943; as a matter of fact, if the Court please, we did have tax cases before this court involving the year 1943 and involving the same thing that the Commissioner has rejected in this case, and that is allowing the benefits to American Pipe, arising out of the acquisition of Palos Verdes.

That case was settled by the parties under the express understanding that it was only for the purpose of the settlement in that case; that it could have no effect, would have no prejudice as respects either party in the matter of litigating the similar issues in the subsequent years.

It, of course, is obvious, in view of the net operating loss sustained by Palos Verdes in 1943 of $245,000, and in view of the fact that American Pipe consolidated the operations of Palos Verdes for the period of December 2, 1943, with its operations for the year 1943 the question of operating

loss carryovers goes from 1943 into, perhaps, at least '44 and into, perhaps, '45. [30]

Now, Mr. Baird has given quite an extended story of the development and, admittedly, an unsuccessful development of the Palos Verdes venture, as a real estate operation for residential purposes.

So far as respondent is concerned, these historic facts, though interesting, have significance in these proceedings only insofar as they show the unsuccessful efforts over a period of years to operate profitably this real estate venture, as it reflects upon its financial condition and, in fact, bankruptcy, if the Court please, not that it took bankruptcy, but financially it was bankrupt at the time American Pipe, through its president, Mr. Lane, became interested in acquiring for American Pipe the entire stock of Palos Verdes. I don't know just exactly when Mr. Archer came to work for American Pipe. I don't think Mr. Baird was quite clear, though we do know that some time in 1942, and at some time prior to August 18, 1942, at which time Mr. Archer opened an escrow arrangement in the Bank of America for the purchase of Palos Verdes stock, Mr. Archer was currently employed by American Pipe.

Respondent wants to call particular attention to this phase or segment of the story as being of rather singular significance as to the sudden interest of Mr. Lane to put his steel factory into the real estate business. I believe the facts will show that in July, 1942, perhaps earlier, Mr. Lane was, of course, an

enterprising industrialist, was trying to [31] obtain his share or as much of his share as he could of the so-called war contract work. And in early August of 1942, I believe the facts will establish that American Pipe was requested to make a bid with the Chemical Warfare Department for the purpose of manufacturing tanks to be used for some purpose of the Defense Department, apparently containing some kind of gases relevant to chemical warfare.

The facts will show that at some time, perhaps a few days, prior to August 19th, perhaps only a week after the bid had been submitted on the chemical warfare contract, Mr. Archer and Mr. Lane were arranging to start the acquisition of the stock of Palos Verdes, an operation which the evidence will show was in a hopeless state at that time, and in the foreseeable future, in the context of the time.

The evidence will show, as Mr. Baird has averted to it, that the money with which Mr. Archer acquired all of the capital stock of Palos Verdes in his name was furnished by American Pipe. About a week after the opening of the escrow arrangement, the facts, I think, would show that American Pipe was granted this contract, which, as I recall, was approximately a three and a half million dollar contract. I think it is quite obvious that the facts will show that American Pipe was highly elated and anticipated the reaping of huge war profits.

Now, in this escrow arrangement that was opened in [32] August of 1943, Mr. Archer appears as

nominee. He never represented himself, the facts will show, as anything other than a nominee, not a principal, but an agent.

I believe the facts in this case will show unequivocally that Mr. Archer's sole role in the drama was the acquiring of this stock for and on behalf of American Pipe.

Mr. Archer found a great deal of difficulty in acquiring this stock. Many of the stockholders, the evidence will show, were suspicious of Mr. Archer's offer, for, at the time they received Mr. Archer's escrow offer, which was to purchase their stock for $2 a share, an accompaniment prepared by Mr. Ben Haggott, the president of Palos Verdes, pictured in the most morose language conceivable, the utter and hopeless condition of Palos Verdes from the standpoint of ever producing any profit to the stockholders in the development of real estate at Palos Verdes at that time. But, notwithstanding this, many inquiries were made by the stockholders before they would release their investment to the corporation commissioner's office, and evidence will be developed along that line.

The evidence will show in this case, if the Court please, that Mr. Archer, whenever it became necessary, in order to obtain the stock he was after, when he ran upon a shareholder who was unduly suspicious of his motives, represented to them that he represented a defense plant engaged in [33] war contracts, and that the only reason why his principal was interested in this stock was in order to

broaden its tax base under consolidation of operations.

Now, notwithstanding that, Mr. Lane and Mr. Archer were working from the beginning, as the facts will show, in the acquisition of Palos Verdes stock. The evidence will likewise show that in May, I believe, some time in May of 1943, Mr. Archer writes a letter to American Pipe and Steel, of which Mr. Lane was then president, the company which had furnished the money with which to acquire the stock, and on the face of the letter apparently apprised him, for the first time, that he had been acquiring this stock, and asking them whether they would be interested in putting money into Palos Verdes.

The evidence will show that in a letter dated November 25, 1943, Mr. Lane addressed a letter to the board of directors, in which he refers to the letter of May, 1943, from Mr. Archer, and refers to the fact that during the intervening period, they, meaning the board of directors, had discussed the question. I believe that last statement is a bit out of the proper context. In this letter to the board of directors, Mr. Lane stated that at that time, referring to the time of the letter from Mr. Archer, that American Pipe was not interested, because it could not see how it could fit in the operations of Palos Verdes with its steel fabricating business. [34]

However, in the letter of November 25th, Mr. Lane goes into great detail in explaining to the board of directors the advisability of acquiring Palos Verdes and the profits which he anticipated

could be made by reason of American Pipe going into the real estate business and the alleged indirect benefits which American Pipe could expect to receive.

Now, the transaction was all completed and ready to go as of December 2, 1943, and on that date, I believe, Mr. A[illegible]er transferred this stock to American Pipe.

That completes the picture. If the Court please, going for a moment to the law of the case, the question of the obtaining benefits such as we have involved here, by an acquiring corporation through the operating losses and invested capital of the acquired corporation, though at that time consolidated returns were permitted for all types of corporations, as is set forth in Section 141, which was brought into the Revenue Code with the Revenue Act of 1942, notwithstanding the fact that Section 141 did not specifically mention the prohibition of the benefits of consolidated returns under circumstances such as we have here, judicial law was made with respect to Section 141, which stated that the acquired corporation could not be and was not within the meaning of Section 141 an affiliated corporation within the meaning of that section, where the acquisition had no business purpose; that undoubtedly occurred to Congress that Section 141 and [35] the judicial determinations of that section did not sufficiently protect a tax loophole which was never intended, because as a part of the Revenue Act of 1943, made effective as to taxable years beginning after December 31, 1942, provided that

in a situation such as we have here the benefits obtained by the acquiring corporation, by whatever means and under whatever method, would not be permitted, if the principal purpose—not the sole purpose—but if the principal purpose of the acquisition was the evasion and avoidance of its Federal tax liabilities.

I agree with Mr. Baird that Section 129 is not directed just to criminal and civil penalties in the use of the term "evasion and avoidance," but that those terms were used to simply deny tax benefits where the prescribed purpose was present, so that you do not have, and the government makes no charge in this case, of either any criminal fraud or civil fraud.

Now, if your Honor please, the statutory notice in the American Pipe's case for 1944, '45 and '46 denies the benefits which American Pipe claimed in its consolidated returns from the operations of Palos Verdes. The Commissioner denied those benefits, and I believe there is one adjustment in the statutory notice which has no relation to that particular point. It was the disallowance of some wages paid in contravention of laws, Federal laws, at that time. There is [36] in that case, in American Pipe's case, statutory notice, as well as in Palos Verdes, a determination that in fact the losses of Palos Verdes has not been established by reason of the failure to establish the basis of the property.

The only issue, as we come down to the Court, inasmuch as we have stipulated upon a determination of the facts, the basis in the property, and the

other minor issues not being contested, in paragraph 16 of the stipulation, the parties have provided as follows:

The sole issue presented to the Court, and that, I might say, applies to both these docket numbers, is whether American Pipe is entitled to the tax benefits which it claimed in the consolidated returns for 1944, 1945, 1946, by reason of its acquisition of the entire capital stock of Palos Verdes.

I want to close this statement with the closing scene in the picture from a factual standpoint. The stock of Palos Verdes was acquired 100 per cent, that is, the title to that stock, 100 per cent, on December 2nd, as a record notation, came into the name of American Pipe. Within the period of approximately ten days, perhaps less—I am not quite clear—Palos Verdes advertised that on a certain date in December, that being the current month, it was putting up for public auction all of the real estate which it owned and operated. I think the evidence will show at that auction sale there were no interested parties. However, the facts [37] will show that American Pipe deeded a large block of its lots in a sales transaction, if the Court please, to a Mr. W. G. Kreiger, who is now the owner, perhaps the sole owner, of Palos Verdes, for $18,000. However, the $18,000 was evidenced by a note payable in four years.

Mr. Baird: May I interrupt you? Didn't you misstate yourself? Aren't you talking about Mr. Dahlberg?

Mr. Maiden: Whom did I say?

Mr. Baird: You said Mr. Kreiger.

Mr. Maiden: Mr. Dahlberg.

Mr. Baird: You had me thoroughly confused here, more than I usually am.

Mr. Maiden: And the facts will show that, in order to sell that property to Mr. Dahlberg, they had to take, as I say, a four-year note for the $18,000. That sale, of course, if the Court please, was subject, as were all sales, to the outstanding taxes on the property.

The facts will further show that American Pipe advanced to Mr. Dahlberg the money with which to pay the taxes on the choicest of the lots which he had received under the deed in 1943. The facts will further show that further taxes were paid by American Pipe.

The facts will further show this: When we come into 1944, and I might state that a sale in 1943 to Mr. Dahlberg of the large block of lots resulted in the loss that [38] year of Palos Verdes of, I would say, substantially, if not all of the $245,800.74—in 1944, another auction sale was advertised to be held, I believe, on three consecutive days in January, perhaps starting January 17th; that there may have been some sales, though at what amounts it will be interesting to find from the record, subject, of course, to taxes, and perhaps the purchasers may have been Mr. Lane personally or someone on his behalf; and that all of the rest of the real estate holdings of Palos Verdes were abandoned and allowed to revert under the decree of August 2, 1943, to the State of California.

So that at the end of the redemption period required in that decree, which I believe will be February 2, 1944, Palos Verdes had not one grain of real estate.

Now, if the Court please, I believe the facts will also show that Mr. Haggott, the president of Palos Verdes, became aware in the period immediately preceding commencement of World War II, or certainly after Pearl Harbor of December 7, 1941, that, in view of the large invested capital, the large net operating losses, and the inability to produce any appreciable net income, made Palos Verdes an unattractive subject for corporations then engaged in the work of profitable war contracts. And the evidence will show that Mr. Haggott undertook to sell the stock of Palos Verdes to other corporations in the early part of 1942—I believe as early as February, [39] 1942—to other corporations for the specific purpose of their gaining the tax benefits which are prescribed by Section 129. The facts will show that Mr. Archer, in his communications with reluctant shareholders, gave them a picture of utter hopelessness, so far as Palos Verdes was concerned. I believe his correspondence or some of it will show, when it is received by the Court, that Mr. Archer stated that he was only interested in the corporate structure.

I appreciate very much, I might say, the inordinate length to which the Court has allowed Mr. Baird and myself to present our respective contentions and to enumerate, in order that the Court might more readily catch the significance of events,

these facts as we each believe will be established in evidence in the case. Thank you, very much.

The Court: We will take a brief recess.

(Recess.)

The Court: Let us proceed.

Mr. Sullivan: I offer a stipulation of facts, attached to which is Joint Exhibit 1-A.

The Court: It will be received.

The Clerk: 1-A.

(The document above referred to was marked for identification as Joint Exhibit 1-A and received.)

Mr. Baird: Your Honor, may I inquire about the rule excluding witnesses? We have in the room Mr. Lane, [40] the president of American Pipe, and also Mr. Dahlberg, who is vice president of American Pipe. Now, as I understand the rule, it is permissible for the officers of the corporation to remain in the room?

Mr. Maiden: Yes, sir, that is correct. I understand under those circumstances the only witness presently to be excused would be Mr. Archer.

Mr. Baird: That would include him. We are going to talk to him right now.

Mr. Archer, will you take the stand, please?

Whereupon,

ROBERT P. ARCHER

called as a witness for and on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name for the record?

The Witness: Robert P. Archer.

Direct Examination

By Mr. Baird:

Q. Where do you reside, please?

A., I reside at 1424 North Crescent Heights Boulevard here in Los Angeles.

Q. In what business are you now engaged?

A. Well, I am president of the California-Doran Heat [41] Treating Company, and I am also the sole proprietor of Archer Machine Products Company.

Q. Just by way of introduction, will you tell us, please, what the California-Doran Heat Treating Company is, and would you spell that, please, for the Reporter?

A. It is California-D-o-r-a-n Heat Treating Company.

Q. Would you tell us just briefly what does that company do?

A. Harden and temper steel, process steel, make it harder, and take the hardness out of steel, have the largest heat treating firm west of Chicago.

Q. And your plant is located at what place?

A. 2830 East Washington.

(Testimony of Robert P. Archer.)

Q. Approximately how many employees do you currently have?

A. Well, we have 104, I believe.

Q. Can you tell just a little bit about the nature of the work that you do? Is it done for airplane factories or other plants or what?

A. Yes. We do work for every large airframe manufacturer in this area, and also their subcontractors. Most of the large airframe subcontractors have their own heat treating departments, but their subcontractors have to have their heat treating done by a commercial heat treater such as ourselves, and we do finished machine parts in a liquid heat [42] treating scale-free method that has been developed the last ten years; precision parts right on down to rough forgings which are annealed and welded structures. We do $100,000 in sales a month.

Q. Mr. Archer, are you a substantial stockholder in that company?

A. Yes, sir; I own 60 per cent of the stock.

Q. You mentioned a while ago that you also are the sole proprietor of the Archer Machine Products. Will you tell us what that is, please?

A. Archer Machine Products has been in existence for about 12 years, started in 1942, and its principal work is making machine parts, aircraft parts for the prime contractors, like Lockheed, Northrop, Douglas, North American.

Q. And is that machine products enterprise connected in any way with the California-Doran Heat Treating?

(Testimony of Robert P. Archer.)

A. No; except that California-Doran does their heat treating.

Q. Is your Archer Machine Products plant located at the same place? A. No.

Q. Approximately how many men do you employ there? A. Around 40, generally.

Q. I believe you stated that you do make parts for Lockheed, Douglas, Northrop and other aircraft companies? [43]. A. That's correct.

Q. Is there anyone else associated with you in that enterprise? Are you the sole owner of that?

A. I am the sole owner of it, yes.

Q. Now, going back into a little history, Mr. Archer, are——

I may ask a leading question or two here, Mr. Maiden, because this is preliminary.

Mr. Maiden: As long as it is irrelevant and immaterial, I have no objections.

Mr. Baird: All right, you stop me when I get too far afield.

Q. (By Mr. Baird): Mr. Archer, I believe you stated to me the other day that you are a native of California?

A. Yes, sir. I was born in Redlands, California.

Q. And, like Jack Benny, you are past 39 years of age? A. In 1899 I was born. I am 54.

Q. Now, will you tell us, please, something about your business experience? First, may I direct your attention, after World War I, what enterprise or business did you then become engaged in?

A. Well——

(Testimony of Robert P. Archer.)

Q. First, may I ask you: Were you in World War I?

A. No, sir; I was just graduating from high school in [44] 1918, and World War I ended in November of 1918.

Q. All right. Now, what was the first business that you entered or the first occupation in which you engaged?

A. I went to work for the California Title Insurance Company at 626 South Spring Street. The president of this company was my father's law partner, and I became an assistant escrow clerk at the California Title Insurance Company. I remained there for, oh, until about 1920, and I went to work as an escrow clerk at the Security-First National Bank, Fifth and Spring.

Q. In that connection, did you learn something about escrow and real estate transactions?

A. Yes, I did. I was presently—the California Title was practically 100 per cent real estate escrow, and at the Security Bank there was probably 98 per cent real estate escrows. And while there I became acquainted with Gette, the oil man, and he was moving his operations from Oklahoma to California, and I left the Security Bank in 1923 to go to work for George E. Gette in connection with their properties and leases and real estate and equipment.

Q. Did you have anything to do with the acquisition of leases or the passing on the formation of leases or terms of the leases?

(Testimony of Robert P. Archer.)

A. Yes; I handled all their real estate transactions. When it was determined that they wanted property in a certain [45] area, I either called on real estate people in the area or—to get them direct from the owners of the property, and at all times put the matters in escrow. And then I had more or less charge of their various properties in Signal Hill and Santa Fe Springs, which were very prolific in those days as oil-producing areas, and Huntington Beach, too.

Q. Did you, at any time, do any work as an appraiser of real property?

A. Yes. Mr. Gette had a stroke, and his son, J. Paul Gette, sort of moved into the office, and we disagreed a little, and I went to work for the Fidelity Savings and Loan. That was about 1924 or '25. I was an appraiser and—sort of a junior appraiser. I went in there at the suggestion of Mr. John Cooper, who was vice-president of the Security Bank and who had befriended me slightly when I was an employee of the Security Bank. And he pointed out that there was a lot of older men connected with the Fidelity Savings-Loan; that a young man might have a wonderful opportunity there.

So I stayed with the Fidelity Savings and Loan, and ultimately became chief appraiser until approximately 1930, at which time I was 30 years old. My age and the years are the same.

Q. During your work as a young appraiser, did

(Testimony of Robert P. Archer.)

you work under the supervision of any other senior appraiser?

A. In the early part of my employment at the Fidelity [46] Savings and Loan, I worked under a Mr. Allen, who was an older man, and for a few years——

Q. Can you tell us a little more specifically what was the nature of your work as an appraiser? Were you appraising all property, oil property, or housing facilities, apartments, or just what?

A. The title "appraiser" is slightly misleading because, in addition to my duties as appraiser, I was a business seeker and received a commission, if certain brokers or achitects or subdividers, real estate people, applied to this company for loans through me, I received a commission. And I was out soliciting that business and also making the appraisal on the loans on which I received a commission frequently, and also an appraisal fee.

The principal type of loans that we were making, the company was making, were residential loans, and because the loans were monthly installments, which was somewhat an unpopular thing in those times, we did not get the very highest grade loans, because our interest rate was high, and the monthly installments didn't seem to appeal to the people as well as the straight three-year loans that the banks were making in those days.

Q. During this period or about the time you are now referring to, did you engage in any building

(Testimony of Robert P. Archer.)

construction of your own, building of houses for sale? [47]

A. Yes, I did. My then father-in-law was a retired builder, contractor, and he assisted me. But I built a house on Lillian Way, 545 North Lillian Way, in 1922. Then I built a house at 544 South Bronson, about 25; and in partnership with John Cooper, who was vice-president of the Security Bank at the time, and his brother, we built an income unit on Ridgewood, I believe it is, just north of Melrose, 767, I believe, which we subsequently sold, and all of the other properties were sold at a profit.

The Court: What do you mean by "an income property"?

The Witness: A two-family—a double building. It is for two families.

The Court: Where did you get the name "income"?

The Witness: We called it "income" in the brokerage business because it is built for income, to be rented; as a rental income.

The Court: It is not determined by the size of the property?

The Witness: No. It just happened that this was a building for two families, separate, about five rooms on each side, a double. But upstairs and down it would be a duplex. And then there are four-family flats; in this particular instance, we made the mistake of making a two-family unit, when we should have built a four.

(Testimony of Robert P. Archer.)

The Court: Such units as these are in the nature of [48] investments?

The Witness: Yes. They are built for the purpose of getting income on the investment, on the funds invested; or in my case I lived in one side and got the rental out of the other side for a while.

Q. (By Mr. Baird): Now, Mr. Archer, can you give us some idea as to the size of this Fidelity Savings and Loan that you worked for, that is, with reference to the amount of loans in a year, just to give us some——

A. The Fidelity Savings and Loan had assets in excess of $40,000,000, were at the corner of 6th and Hill for a great many years, and then moved to the corner of 6th and Spring.

Q. Now, you left the Fidelity Savings and Loan, I believe you stated, about 1930? A. Yes, sir.

Q. Will you tell us, please, with what firm you then became engaged?

A. I went to work for McCabe, Fewel & Company.

Q. What is their business, please?

A. They were in the stock and bond business, investments.

Q. Did you have any difficulty after you went to work with them? A. Yes, I did. [49]

Q. What was the nature of that trouble?

A. While I was working for McCabe, Fewel, I called on some friends of mine that were depositors in the Fidelity Savings and Loan, and in some instances influenced them to purchase other securi-

(Testimony of Robert P. Archer.)

ties, and the Fidelity Savings and Loan management, which had recently changed hands just before I left, didn't like that, and so they brought suit against McCabe Fewel and myself for calling on their depositors, and endeavored to get a restraining order and use what influence they could to get some loans called. McCabe Fewel said they couldn't stand to have the loans called. And that was the end of my association with McCabe Fewel.

Q. How did you come out in the lawsuit?

A. We won it individually.

Q. But lost your job? A. Yes, sir.

Q. Well, after you left the McCabe Fewel and Company, with what concern did you then become associated?

A. I went to work for the firm of Schwabacher and Company, members of the New York Stock Exchange.

Q. And how long were you there?

A. From approximately 1931 to about 1938. That would be my best guess. I am not sure of those dates.

Q. During that time you were engaged in buying and selling building loan certificates? [50]

A. And mortgage guarantee certificates. The bank moratorium occurred, as you all know, and during that period building and loan certificate holders were not able to get their money, and frequently they would sacrifice them on the market. And when they appeared on the market, I developed a business of buying and trading in them.

(Testimony of Robert P. Archer.)

and also I had general stock and bond clientele, buying New York stock and securities of that nature. But I also dabbled in the building and loan certificates, and later mortgage guarantee certificates—very large company here in those days.

Q. Mr. Archer, did you, during the course of this time, acquire any interest in any large acreage at any place in the County of Los Angeles?

A. Well, the largest piece of acreage I acquired was out near Lancaster. It was around, I believe, 220 acres.

Q. That is approximately how far from here, just so the record will show?

A. A hundred miles, I guess.

Q. All right.

A. Desert, very inexpensive property. It was subsequently condemned by the government for an air base, something of that nature. Anyway, the government condemned the property and it was sold out to them. I had other properties, but not that size.

Q. Did you do any developing on that property, improve [51] it in any way?

A. No, not that. I previously had some property at Fresno, some acreage that we acquired in that transaction with a fraternal brotherhood. Another employee of Schwabacher and Company and myself made a real estate transaction with them, and we acquired as our commission some 60 acres in Fresno County and—160 acres. This was not very valuable property either. The water was very hard to get.

(Testimony of Robert P. Archer.)

Q. Did you on or about 1938 or '39 acquire in some manner or other an interest in a camera equipment shop or a film laboratory or something of the kind? A. Yes, I did.

Q. Will you tell us just how that came about and what your experience was there?

A. A friend of mine worked out in a motion picture laboratory, 16 millimeter, on Santa Monica near Fairfax. He came to me with quite a story about the possibilities, and so I ultimately loaned the man $5,000 and took a chattel mortgage on the equipment, and when he failed to pay, I foreclosed the chattel mortgage and became the owner of the business.

During that time, I was still in the stock and bond business. This was just a little side transaction.

Q. You didn't give up your stock and bond business? A. No, sir.

Q. And at or about what time did you sell that film [52] laboratory?

A. My best recollection would be that it was early part of '42, possibly February or March.

Q. Mr. Archer, during any part of this period, were you licensed as a real estate broker?

A. Yes, I was.

Q. And will you tell us about that as to——

A. Well, I don't have the exact dates, but off and on I have probably—was licensed as a real estate broker more than 50 per cent of the time, from

(Testimony of Robert P. Archer.)

around 1926 to 1942 or '43. Since then, I have not renewed my license.

Q. Were you a licensed broker in 1942 and 1943?

A. I was in 1942, and '40 and '41. I can't answer about '43 right now.

Q. Mr. Archer, do you know a man by the name of Ben Haggott? A. Yes, sir.

Q. He was, for a number of years, president of Palos Verdes Estates, Inc., was he not?

A. Yes, sir.

Q. When did you first get acquainted with Ben Haggott?

A. It was while I was still connected with the Fidelity Savings and Loan, and I would estimate that it was around 1926 or '27.

Q. And is Mr. Haggott older or younger than you are? [53]

A. He is considerably younger than I am.

Q. Will you state whether or not you assisted him in any way in learning anything about the real estate and appraisal business?

A. Well, Mr. Haggott worked for the Standard Oil Company as a service station operator on Larchmont, south of Beverly, and was attending the University of California at Los Angeles, and I believe at that time it was located on Vermont Avenue. He impressed me as a very nice young fellow, and when I would buy gasoline there from time to time we got a little better acquainted, and he was ambitious, I thought, so I took him around while I was mak-

(Testimony of Robert P. Archer.)

ing appraisals and outside calls, while in the employ of the Fidelity Savings and Loan.

He was very interested in real estate and appraisals, and used to help me, and I used to try to explain all I could about the business to him, and after he graduated from college, the University of California at Los Angeles there on Vermont, he was seeking a position, and I believe I assisted him in getting a job at the Thomas Mortgage Company. I heard that they needed a man in their mortgage loan department, and I told him to go and apply for the job, and I coached him up all I could to get the job, and then after he got the job he called me on the phone two or three times a week to ask questions about various things, and we became very good friends, I am proud to say. [54]

Q. Now, while I was looking for a document here, I didn't quite get that last sentence. Will you repeat that again, please?

A. I don't know——

Q. Let me just ask the question: Were you referring to the time subsequent to when Mr. Haggott became president of Palos Verdes?

A. This was much before that, I think.

Q. Now, have you seen Mr. Haggott more or less frequently and been in somewhat frequent contact with him? A. Have I or had I?

Q. Had you up to the time that he became president of Palos Verdes?

A. Well, yes, quite frequently. I helped, as I said, helped him get a job at the Thomas Mortgage

(Testimony of Robert P. Archer.)

Company, and we got together to discuss mortgage problems.

He being new in the business, then, they moved him out to the Thomas Mortgage Company's Beverly Hills office, and then things got a little slow and they closed that office, and Mr. Haggott was without a job.

So I suggested that he contact the Pacific States Savings and Loan for a job, and he got the job. He worked there for them for a number of years. And during the period after, when I was employed at Schwabacher and Company, Mr. Haggott was in charge of some—not the head man, but in [55] charge of some of their foreclosed real estate. And at that time I was acquiring certificates, whenever I could, of the Pacific States Savings and Loan, and they were trading certificates for foreclosed real estate in such a way that the Pacific States was ultimately able to pay out a hundred cents on the dollar. I saw Mr. Haggott frequently at that time.

Q. Did you have anything to do with Mr. Haggott's becomng associated with or connected with Palos Verdes Estates, Inc.?

A. No, no. I don't remember—I didn't have anything to do with that.

Q. Now, the record will show, although it is not in evidence yet, but there will be no dispute about it, that Mr. Haggott became president of Palos Verdes Estates, Inc., on Fberuary 2, 1938, having been on the board of directors for a few months prior to that.

(Testimony of Robert P. Archer.)

I will ask you to state whether or not at any time during the period 1938, '39, '40, '41, '42, Mr. Haggott sought your advice in connection with problems with which he was confronted in regard to the management of Palos Verdes Estates?

A. Oh, I talked to him a number of times. I knew that he was connected with Palos Verdes Estates and that Palos Verdes Water Company. He was secretary, I recall, of the Palos Verdes Water Company. And I also recall that he was building some houses there for sale, and I went down and looked [56] at the houses with him, and we looked over the various parcels of real estate in Palos Verdes, and I knew of course that it was in distress.

Q. Now, Mr. Archer, you had resided in the City of Los Angeles continually had you not, during all of the time that the Palos Verdes project was in being?

A. Yes, I am sure of that. I came to Los Angeles in 1904 and I have lived here ever since.

Q. And will you state whether or not you had any general familiarity with the Palos Verdes project and what it represented and what its objectives were?

A. Well, it was promotion, as I recall, by a fellow named Lewis, who later ran into trouble with the law, to develop a very attractive residential section south of Redondo. It was high, with a view of the ocean. In fact, I think it is beautiful property. And apparently it was a victim of circumstances or

(Testimony of Robert P. Archer.)

bad promotion, because it never did seem to develop the way it should have, in my opinion. And I felt that Mr. Haggott was in a position to do something worthwhile there, because he was energetic, an intelligent young man, ambitious.

Q. At or about the year 1942, did you reach any conclusion in your own mind as to whether you would have any interest in the Palos Verdes Estates, either the property there or the company as a whole? [57]

A. Well, in 1942, I was not very wealthy. My wife and I had been divorced in '41, and I had given her the house, furniture, practically everything, and I had disposed of the film laboratory in the early part of '42, having lost considerable money and time. And I had very little in the way of assets at that time.

At that time, I talked to Mr. Haggott about Palos Verdes Estates. In fact, he talked to me considerably about it, and I didn't have too much working capital to go into anything that would be worthwhile, although I realized that my experience in buying building and loan certificates was not too dissimilar from what it would take to buy the preferred stock of a reorganized corporation, and a lot of money had been made in this area on foreclosed real estate bonds, reorganizations—I was real estate-minded, but I was a little mixed up, too.

Q. Were you familiar with the situation with reference to the taxes, the real estate taxes due the County of Los Angeles, City of Palos Verdes, the

(Testimony of Robert P. Archer.)

School District of Palos Verdes, and other political subdivisions?

A. Yes, I was aware of the fact that there was some technicality in the assessment; that was probably '31 or '32. That was probably the reason it had not been sold to the State of California for taxes. And that there was a possibility of eliminating taxes or portions of those taxes by legal action. [58]

Q. Mr. Archer, the record will show, and I believe it has been incorporated in our stipulation, that a suit was started in July 27, 1943. That is not in the main part of our stipulation, but it is set forth in the exhibit attached. And that a decree, pursuant to that suit, was entered later in August, August 2nd, I think, in which the Superior Court of this county held that the assessment of the taxes against Palos Verdes property in the disposition of the State of California was void, no effect, or words to that effect.

Now, we have been talking about the year 1942. I am asking you if you had any thought or idea at that time that something might be done about that tax situation?

A. Very definitely. I discussed the matter with Haggott. We discussed that frequently.

Mr. Archer, will you tell us, if you know, whether or not it was somewhat of a common practice in this area, that is, Los Angeles County, at or about that time to bring suits of this kind to invalidate the assessments and the transfer of property to the State of California?

(Testimony of Robert P. Archer.)

A. Well, that is kind of a hard question for me to answer.

Q. You may not know the answer. I am not sure that you do.

A. I can't say that I do. I have felt that there was a good opportunity of setting aside some taxes here, or a [59] compromise that would be desirable.

Q. Mr. Archer, do you recall now whether or not there was a committee of substantial property owners in this county who organized themselves into a committee for the purpose of inviting the Legislature or suggesting to our Legislature that something be done to restore property that had been lost by reason of taxes in the depression, to the tax roll, so that the counties and cities could get some taxes from the property? Were you familiar with any movement of that kind?

A. Well, very vaguely. I am not familiar with the details, but I have heard that discussed. But I can't say that I had any experience or any actual knowledge.

Q. Very well. Coming down, then, to your discussions which you say you had with Ben Haggott in 1942, as I understand it, you were aware of the fact that probably was in distress because of the real estate tax situation? A. This property?

Q. Yes.

A. I didn't feel that that was the only reason it was in distress.

Q. What were the other reasons?

A. Well, there was 600, 700 lots. The taxes were

(Testimony of Robert P. Archer.)

around $80,000. I don't knew, it seems to me, a rapid calculation, that lots for $100 or $150 in Palos Verdes would be awfully cheap. Go down there today, I think you will find there [60] are not many lots for many times that.

Q. Do you have some knowledge as to what lots are selling in Palos Verdes for today, the average lot?

A. No, but I don't imagine that $10,000 buys an awfully good lot.

Mr. Maiden: Still a lot of that property, Mr. Archer, that is inhabited to this day by groundhogs and jackrabbits, isn't that correct?

The Witness: Well, you can't prove that by me, because I haven't been down there lately, actually.

Mr. Baird: We are getting a little bit off the track.

Mr. Maiden: Pardon me, Mr. Baird.

Q. (By Mr. Baird): Will you just continue and tell us what your discussions were with Ben Haggott during the early part of 1942, or what conclusions did you reach as to what might be done with that property or that company?

A. Well, I was searching for something in a business deal or a job or something to get into, to get myself a little income. I had alimony to pay, in addition to taking care of myself. And I talked to Ben a number of times. He felt, and I finally agreed with him, that if we could acquire the stock of Palos Verdes, with my financial contacts, having been in the securities business, having associated

(Testimony of Robert P. Archer.)

with people with [61] funds, that we could possibly work out something that would be beneficial, profitable to me, and Mr. Haggott, as I recall, told me that he had worked very hard for a few years and had tried to get the various shareholders to take real estate, and he had gotten some of the holders of accounts payable or liabilities of various types to take real estate in payment of their obligations, and he had just about run out of ideas. He had his hands full with the water company and with building a house or two of his own. He also thought that if—expressed the opinion that if somebody developed the property and got it out of its then distressed condition, that houses might be built which would develop users for his water, the Palos Verdes Water Company.

And stock had been selling for as low, I guess, as 25 and 35 cents a share. And, as I remember, there were just under 3,500 shares, and I realized it was a very difficult task to get 100 per cent of any stock of that type, because people very generally moved and are out of the state. But I undertook the task of endeavoring to obtain as much of the stock as I could.

Q. Now, were you familiar with what requirements, if any, there were in the articles of incorporation or the bylaws—I don't know which—of Palos Verdes, as to the amount of stock that would be necessary in order to make an assessment on the stock? [62]

(Testimony of Robert P. Archer.)

A. I don't know whether it was in the bylaws or whether it is in the laws of the State of California, but my understanding is that two-thirds vote, either the bylaws could be amended to permit an assessment, or the assessment could be levied; I am a little rusty on that. Two-thirds is the—I figured it—the minimum would be 70 per cent. I'd like to get 100 per cent of the stock.

Q. The record itself will be the best evidence, but it is your impression that you had to have at least two-thirds, either to amend the bylaws or to make the assessment, one or the other?

A. Yes.

Q. We shall offer the bylaws to clarify that point so we can pass on to something else.

I used the term "bylaws"; it is the articles of incorporation that made that requirement.

Did you, during the course of your discussions with Ben Haggott in 1942, ever meet with Jack Lane or have any discussion with Jack Lane, the president of American Pipe?

A. While I was talking to Ben Haggott?

Q. Well, I mean during that period?

A. Yes, I talked to Jack Lane undoubtedly in 1942 a number of times.

Q. Had you known Jack Lane as long as you knew Ben Haggott? [63]

A. No, but I had known Jack Lane probably ten years at that time, pretty close to that.

Q. Well, now, do you have any record by which

(Testimony of Robert P. Archer.)

you can refresh your recollection and tell us when you first talked to Jack Lane about Palos Verdes?

A. I haven't any record. I discussed with Jack, possibly at Sumerset House—I think he told me he was working on some chemical warfare contract, and I told him that I knew a fellow who was with the chemical warfare division. The continuity of this I am a little uncertain about. It happened to be a Colonel English. And Jack was quite interested in the fact that I knew Colonel English who was, I guess, the principal officer of the chemical warfare division in this area.

I don't know how the negotiations started——

Mr. Maiden: What negotiation is that?

The Witness: Talking about Mr. Lane. He asked me if I had talked to Mr. Lane.

Mr. Maiden: I just wanted to know what negotiations he is talking about, the negotiations for the warfare contract or the negotiations about Palos Verdes.

Mr. Baird: I think he is just one answer removed from it, if you will just pardon him a minute.

The Witness: I better remove the word "negotiation," then. In our discussion, I believe Jack asked me why I didn't [69] come out and go to work for him, we talked about it. And I said I had this Palos Verdes deal that I was pretty enthusiastic about, and I didn't think that I could make enough money at what he could pay me as an expediter; while I was in the security business, I made $30,-

(Testimony of Robert P. Archer.)

000 and $40,000 a year, and I wasn't going to make a financial recovery at $400 or $500 a month. And I think it dragged along for a while, and I told him I thought I could get control of this if I had a little more working capital, and that I would work with him in such a way that it could introduce him to Colonel English and use whatever influence I could, and have him considered favorably, and spend part of my time on his expediting; that I needed some money to accumulate this preferred stock. If I got enough of it together, I was sure—I felt confident that I could, oh, raise money then, and this was twelve years ago. My interests are considerably different at the present time, and I am a little rusty on the continuity.

Q. (By Mr. Baird): Let me ask you just a question or two: Did you finally decide to go to work for the American Pipe and Steel Company?

A. Yes.

Q. And in what capacity?

A. Well, they had me on their books as one thing, and I think accountant, but I have never done any accounting in my [65] life, and I don't know the first thing about it. But I was an expediter, and a general handyman for whatever happened or came up. In fact, an Eastern firm needed somebody to help them out for three of four months, and I worked for them for three or four months to expedite some electric motors. That was the Midland Arsenal.

(Testimony of Robert P. Archer.)

Q. What was the arrangement with reference to compensation?

A. I received $100 a week plus expenses, as far as my expediting was concerned. And Jack was going to lend me a certain sum of money with which I was going to buy this stock.

Q. In other words, if I understand you correctly, your statement is that you were going to work as an expediter at American Pipe and Steel at $100 a week, but that Jack was to lend you a sum of money for your use in connection with your project with regard to Palos Verdes stock?

A. I felt the real estate had a great deal of future and possibilities, and I believe I convinced Jack of that.

Q. You remember now when you went to work, actually went to work for American Pipe?

A. No, probably around the middle of 1942.

Q. Just to refresh your recollection, would you say it was about August 12, 1942?

A. Could very easily be. I wouldn't remember that accurately. [66]

Q. You continued on there with American Pipe and Steel in your capacity as an expediter for what period of time?

A. Well, I continued on as expediter for, I guess, a couple of years. But part of the time I worked for Midland Ordnance, I believe it was, some firm in Illinois that had government contracts. But during this time I was also spending time on

(Testimony of Robert P. Archer.)

my own business, Archer Machine Products, which had been started, and Mr. Lane was aware of that.

Q. I believe you testified a while ago that the Archer Machine Products had been in operation for about 12 years? A. Yes.

Q. And it was in operation in 1942?

A. It was starting in 1942.

Q. And Mr. Lane of American Pipe was aware of that fact? A. Yes, he was.

Q. Do you know now why you were carried on the books of American Pipe as an accountant?

A. Well, I guess it was simply to avoid wage stabilization or something of that kind regulations.

Q. You, in fact, never did any accounting?

A. No.

Q. In order that we may have some little better understanding of what this word "expediting" means, what in the vernacular of the trade does that mean? [67] A. Well——

Mr. Maiden: In what trade?

Mr. Baird: Well, anybody engaged in war contracts, anybody that I have known anything about has expediters. I am speaking of that more particularly.

The Witness: Expediting is a very essential part of production control, of meeting schedules, and when the pressure is on, and schedules have to be met, somebody frequently has to go around and make sure that the material, first of all, is obtained, and the right material, and certain work is placed with certain subcontractors, and that it is followed

(Testimony of Robert P. Archer.)

up and followed through, and it covers a multitude of sins in the defense industry.

Q. (By Mr. Baird): Now, with reference to the getting of equipment to carry on the contract, did you in your job as expediter have anything to do with that?

A. Well, I had quite a few problems on general —with electric motors, getting equipment. I have had experience on getting priorities. I don't remember whether I did much of that for American Pipe and Steel. I was out on Beverly when the Air Force had a priorities division—Weber Trailer, Abegg and Reinholdt—to see that the heat treating was gotten out on time, and the parts were going to come through, because we had parts coming from this Whitaman here and Weber [68] Trailer over here, and they had to get together. No use getting these out in time if these aren't. They are all part of the same assembly, and then they have to be possibly plated or painted or rust-prevented. There is all sorts of processing that has to be done under government specifications.

There are various types of steel that must be used, various types of inspection, hardness tests, electric magnetic inspection for cracked material, and of course dimensional specifications, tolerances, of course, that would be an inspection, but nevertheless an expediter has to try to get those things through inspection in time to meet the schedules, or the production control is in bad shape.

Q. Well, in other words, you were confronted

(Testimony of Robert P. Archer.)

with meeting the deadlines as they were approaching for the delivery of the finished products, and in order to do that it became necessary to see that you got the necessary priorities from the board—the production board to get the material, and that the material was furnished, and that the work was then turned out at the proper time in the plant?

A. That was my intention.

Q. Now, during all of this period of time that you were there, was Jack Lane, the president of the company, present all the time, or were there times when he was away from Los Angeles? [69]

A. Well, I am satisfied he was away a good part of the time. I saw him frequently, but not daily.

Q. What, in this busy time, what did take him away from that scene of operations?

A. Possibly business problems such as soliciting business or handling various phases of the business.

Q. You know whether or not he made any trips to Washington, D. C., or to war plants around the country, or other places?

A. I know he made trips to San Francisco, and I believe Washington, D. C., but I can't say just when.

Q. As I understand you, you had your own machine shop during this period of time, and you took your position with American Pipe with the understanding that that would continue. How much time was it necessary for you to devote to your own machine shop?

A. Well, that isn't exactly a correct statement.

(Testimony of Robert P. Archer.)

Archer Machine Products were starting and had about two pieces of equipment, and occupied space in D. & F. Tool & Machine Works on La Cienaga, and I purchased these pieces of equipment, which consisted of a turret lathe and a milling machine, a drill press, from D. & F., with the understanding that they had certain jobs that were to be run on them, these machines. They would provide the supervision, and even let me have men, and charge me for their time, and as time marched on, I would [70] take over and ultimately move out of this building, which I did.

They wanted to divorce themselves from production type of work, and specialize in what they called tools and dies. They had certain contracts that they had to perform, they had agreed to perform, and that gave them a chance to put them on my lap, as it were, and I finished them up, and ultimately moved the business down a block and a half to La Cienaga and Melrose. This wasn't much of a business. The whole floor area was 20 by 60. That included the office. But it was a beginning. And, although I wasn't much of a machinist, I hired men that were. I had had some financial experience, and during this period American Pipe and Steel had first call on my services whenever anything should or was to be done, and I was single in those days, and I could work nights, and we worked nights at the machine shop, 20 hours a day.

Jack Lane, president of American Pipe and Steel, knew that I was endeavoring to start the ma-

(Testimony of Robert P. Archer.)

chine shop, which was something I had never had any experience in previous to, oh, 1941, and, as I stated before, I had made considerably more money than $100 a week, and I wasn't going to be tied down to this job at the American Pipe and Steel for $100 a week.

The Court: We will recess until tomorrow morning [71] at 9 o'clock.

(Whereupon, at 4:30 p.m., the hearing was recessed to reconvene at 9 o'clock a.m., Wednesday, June 2, 1954.) [72]

The Court: We will proceed.

Whereupon,

ROBERT P. ARCHER

recalled as a witness for and on behalf of the petitioners, having been previously duly sworn, was examined and testified further as follows:

Direct Examination
(Continued)

By Mr. Baird:

Q. Mr. Archer, I believe when we adjourned yesterday that we were interrogating you about the acquisition of the stock of the Palos Verdes Estates, Incorporated. I want to ask you some questions about that a little more in detail than we did yesterday.

The testimony as it now appears indicates that you went to work for American Pipe and Steel

(Testimony of Robert P. Archer.)

Corporation in 1942 and I believe the exact date according to the records is August 12, 1942. Also you testified that at that time you had under way and were engaged in the promotion or operation of a machine shop known as Archer Machine Products, I believe you said that was the name, and that that has continued on down to the present day.

Now, Mr. Archer, will you tell us please, just to get started this morning, what did you do from August 2nd, or August 12th, rather, with reference to the acquisition of [76] stock of this company?

A. The Palos Verdes Estates?

Q. Yes.

A. Well, I set about to write the various stockholders and subsequently called on as many of them as I could find and I opened an escrow in Redondo Beach, I believe it is the Bank of America, yes, the Redondo Beach branch of the Bank of America, where the sellers could deposit their certificates and demand the two dollars a share and also I called on a great many of the people personally.

Q. Can you tell us what it was that prompted you to offer two dollars a share? Was there any magic in that particular figure?

A. Well, the previous sales had been, as near as I could ascertain, around forty cents or fifty cents a share, but I felt that two dollars a share would be a price that would be higher than the market price and one that I could afford to pay and it was my experience in acquiring building and loan certificates that a round figure of that kind was a little

(Testimony of Robert P. Archer.)

more interesting to a prospective seller than just maybe seventy-five cents a share, for instance.

Q. Now, at the time that you started acquiring this stock in August of 1942, will you state whether or not you were acquiring that for your own benefit or were you acquiring it for the benefit of someone else? [77]

A. I was acquiring it for my own benefit.

Q. And how long a period of time did you continue to work in the acquisition of this stock for yourself, Mr. Archer, approximately?

A. Well, I kept working at it for quite some time. There were only about 50 or 60 stockholders and I would do a little campaigning, as you might put it, and devote a little effort on the purchase of the certificates, and then I would do a little expediting for the American Pipe and Steel Company and then some days I would do work for the Archer Machine Products Company.

Q. In the course of this effort of yours to acquire the stock of Palos Verdes Estates, what, if any, contact did you have with a man by the name of Ben Haggott, who was then president of Palos Verdes Estates, Incorporated?

A. I had known, as I stated yesterday, Mr. Haggott for many years, and during this procedure I contacted him frequently and he wrote a letter to the stockholders setting forth the condition of the company at the time I started to acquire the shares. In fact, he gave me the names of the shareholders

(Testimony of Robert P. Archer.)

and I was in contact with Mr. Haggott quite frequently.

Q. Mr. Archer, I show you a letter dated August 18, 1942, signed by Mr. E. B. Haggott, President, and it is written on a letterhead of Palos Verdes Estates, Incorporated, and then right underneath the name there is the slogan, [78] "American Living at Its Finest," and I will ask you if you are familiar with that letter?

A. I would say that this was the letter that he wrote at that time.

Mr. Baird: We would like to offer this letter of August 18, 1942, as Petitioners' Exhibit 1, I believe it is.

The Clerk: That would be Exhibit 2.

Mr. Baird: We would like to offer it as Petitioners' Exhibit No. 2.

Mr. Maiden: No objection.

The Court: It will be received.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 2 and received in evidence.)

Q. (By Mr. Baird): Now, Mr. Archer, I show you another letter dated August 18, 1942, which is addressed to the preferred stockholders of Palos Verdes Estates, Incorporated, and that appears to be signed by E. B. Haggott, President of Palos Verdes Estates, Incorporated, and I will ask you if you recognize that letter as being one of the letters which were sent out?

(Testimony of Robert P. Archer.)

A. I would say that that was undoubtedly a copy of that letter.

Q. This is undoubtedly a copy of that letter?

A. Yes.

Q. As a matter of fact, that is Mr. Haggott's signature, [79] is it not, or would you recognize his signature?

A. I cannot say that I would but I believe it is.

Mr. Maiden: I will stipulate that it was Mr. Haggott's signature.

Mr. Baird: Mr. Maiden, will you also stipulate that this is a true and correct duplicate of the letter that was sent out to the various stockholders?

Mr. Maiden: Mr. Baird, since you represent it to be so, I do so stipulate.

Mr. Baird: Thank you very much, Mr. Maiden.

Q. (By Mr. Baird): Now, you notice that there is attached to that letter a balance sheet dated July 31, 1942; are you familiar with the fact that at that time there was sent out along with Mr. Haggott's letter to the preferred stockholders, a balance sheet similar to the one that I am showing you?

A. Yes.

Mr. Baird: We would like to offer this, if the Court please, as Petitioners' Exhibit No. 3.

Mr. Maiden: Now, which letter is that, Mr. Baird?

Mr. Baird: This is the letter of August 18th of which you have a copy.

Mr. Maiden: And what was No. 2—oh, I see; I beg your pardon.

(Testimony of Robert V. Archer.)

The Court: It will be received as Exhibit No. 3. [80]

(The document above referred to was marked for identification as Petitioners' Exhibit No. 3, and received in evidence.)

Mr. Baird: If your Honor will pardon me just a moment.

Q. (By Mr. Baird): I show you a sheet, Mr. Archer, which bears the date August 18, 1942, also addressed to the preferred stockholders of Palos Verdes Estates, Incorporated, and at the bottom of the page there is a form addressed to the Bank of America, Redondo Beach Branch, Escrow Department, Redondo Beach, California, and I will ask you if that was attached to and was a part of the correspondence that was sent out by Mr. Haggott on this date of August 18, 1942?

A. I would say yes.

Q. And are you familiar with that and that contains, does it not, a proposal by you to purchase the stock under certain terms and conditions?

A. Yes, sir.

Mr. Baird: I would like to offer this as Petitioners' Exhibit next in order. I believe that is Exhibit No. 4.

Mr. Maiden: No objection, if the Court please.

The Court: Exhibit 4 will be received.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 4 and received in evidence.) [81]

(Testimony of Robert P. Archer.)

Mr. Baird: You do not have copies of that? We can furnish them to you.

Mr. Maiden: We do have copies.

Mr. Baird: Inadvertently, I failed to attach a sheet to that exhibit. It should contain two sheets, two sheets attached together, and I will simply add it to the exhibit if there is no objection on the part of counsel.

Mr. Maiden: No objection, your Honor. They should be attached together.

Mr. Baird: Now, if the Court please, in order that the Court may understand the continuity of what we want to show that went on here, I would like to beg the Court's indulgence to read this letter, which is not long, into the record.

Now, this is on the letterhead of Palos Verdes Estates, Incorporated, and it is dated August 18, 1942. It is addressed to the preferred stockholders of Palos Verdes Estates, Incorporated:

"Since 1938.

"During the period of the present management which took office early in 1938 there has been pursued a policy of liquidation and disentanglement of various legal and contractual obligations, accounts payable, and notes payable. Much of this was accomplished by negotiation and trading as at no time, in proportion to liabilities, has there been any substantial amount of cash available. [82] Selling prices of lots has, almost invariably, been far below their 'historic cost' as carried on the books because at no time has the demand for unimproved Palos

(Testimony of Robert P. Archer.)

Verdes Estates real estate been brisk, nor has the property had a market value anywhere near the 'historic cost'; furthermore, much of the property has been wholly or partly without improvements as to roads and utilition.

"Preferred stockholders have been given the opportunity of exchanging their stock for real property and there has been considerable of such exchanging; however, at this time there remains outstanding 3,841 shares of preferred stock. As you will note the balance sheet, enclosed, shows no sizable liabilities other than the delinquent taxes in the amount of $74,965.46 plus 1940-41 and 1941-42 taxes, plus estimated penalties of approximately $37,000.

"The principal asset item in the same balance sheet is unimproved real estate, shown at 'historic cost' of $566,759.84. As has been explained in the past 'historic cost' is acquisition cost plus development expense. To this figure has been added capitalized delinquent taxes, $74,965.46, to which in any final accounting would be added penalties estimated at $37,000 plus 1940-41 and 1941-42 taxes. Contracts receivable, considered good, have a balance of $968.86. Service deposits may or may [83] not be refunded, consequently are assets of unknown value.

"Present Real Estate Market.

"Since our entry into the war a number of factors have arisen which have practically eliminated buyer demand for unimproved Palos Verdes Estates lots. Among these factors are wartime limitations on building materials for construction as re-

(Testimony of Robert P. Archer.)

quired by local restrictions, presence of military establishments, 'dimout' regulations and so forth. Any estimate of how long this present real estate market will continue would seemingly be conjecture based upon duration of the war and its possible consequence. In the meantime, taxes and penalties on the land continue to accrue and possibility of tax sale exists. There exists possibility of compromising delinquent taxes, however, if a compromise were successful it would require cash for completion. The aforementioned conditions seem to indicate, at best, an indefinite future. Last stock sales have been, to the best of our knowledge at prices ranging from 25 cents to 45 cents per share.

"Present Operations.

"Because of general conditions and of financial necessity, operating expenses have been reduced to a minimum. Efforts to sell properties continue at only limited success, and the usual administrative functions of a corporate entity as well as collections are carried on. [84]

"A Possible Solution.

"From time to time efforts have been made to find a buyer who would purchase all of the assets. We have never been successful in this endeavor. Now, however, an offer has been made to purchase all of the outstanding preferred stock for $2 per share. Terms of this offer are set forth in the enclosed form.

"Acceptance of this offer obviously entails a substantial loss to preferred stockholders who have

(Testimony of Robert P. Archer.)

purchased at any price approaching par, however, as previously stated to the best of our knowledge, last stock sales have been at prices ranging from 25 cents to 45 cents per share. In addition to providing some opportunity for salvage, this offer presents an opportunity to take the income tax loss on this investment during a year when income taxes are particularly high.

"We believe it fair to state that if this bidder is successful in obtaining acceptance of his offer by 70% or more of the outstanding stock, that he indicates probability of amending Articles of Incorporation of this corporation so that an assessment against the stock can be levied. Further, in our opinion, if 70% or more of the outstanding stock were sold on the basis of this offer, it would clearly indicate that the preponderant majority of remaining stock outstanding was in favor of such [85] a transaction and that any remaining stock not sold under this offer would be in a small minority and could have no valid objection to levying of such an assignment since the terms and conditions of this offer had been met with favor from a majority of 70% or more. In this connection let it be clearly stated and understood that the management would not submit this offer to the stockholders unless the offer was to purchase all outstanding stock so that all stockholders be given equal opportunity to sell their stock.

"Should you desire to deposit your stock in escrow under the terms and conditions of this offer,

(Testimony of Robert P. Archer.)

proper forms and reply envelope are enclosed herewith for your convenience.

"An attempt has been made herein to supply you briefly with the factual information to the best of our ability but no statements are made with the intent of influencing your decision to accept or reject this offer.

"The books and records of the corporation are available for your inspection at any time and should you desire further information please call at the corporation office at 75 Malaga Cove Plaza, Palos Verdes Estates, or phone REdondo 7-333."

And that is signed "E. B. Haggott, President, Palos Verdes Estates, Incorporated." [86]

The Court: To whom was that addressed, Mr. Baird?

Mr. Baird: This is addressed, if your Honor please, to the preferred stockholders of Palos Verdes Estates, Incorporated. It was a blanket letter which was drafted apparently by Mr. E. B. Haggott pursuant to a plan worked out between Mr. Haggott and Mr. Archer.

Q. (By Mr. Baird): Now, Mr. Archer, showing you Petitioners' Exhibit 4, I want to talk to you very briefly about the offer that was made by you. Will you, for the purpose of the record, simply read the paragraph here and I will ask you if that was the offer that you made and you might just read it out loud?

A. "To the Preferred Stockholders of Palos Verdes Estates, Incorporated: I hereby offer to pur-

(Testimony of Robert P. Archer.)

chase all of the outstanding preferred shares of Palos Verdes Estates, Incorporated, at a price of $2 per share. This offer is good for 15 days from date hereof and unless I can purchase 70% of said stock within said time I reserve the right to cancel this offer. If you desire to sell, please sign the acceptance form provided below, endorse the certificate or sign the attached stock power and forward the same together with the stock to the Bank of America, Escrow Department, Redondo Beach Branch, Redondo Beach, California, with the instructions provided below."

Q. Now, Mr. Archer, was there at or about that time an escrow opened pursuant to the instructions of Mr. Haggott, the [87] president of Palos Verdes Estates, Incorporated, at the Redondo Beach branch of the Bank of America?

A. Yes, there was.

Q. If I understand your testimony correctly, the plan was this:

If a stockholder was interested in accepting your proposal, he was to send his stocks to this Redondo branch of the Bank of America to the Escrow Department together with the certificate or certificates and a guarantee of the signature and so on.

Am I correct in that?

A. That is correct.

Q. And what, if any, response was received to that letter which went out at that time; did any of the stockholders turn in their stock?

A. Yes, a number of persons sent their stock in. In some instances, they would have to get their sig-

(Testimony of Robert P. Archer.)

nature guaranteed by a bank in order to affect transfer, that is at the Union Bank which was the stock transfer agent, I believe they call it.

Q. Now, I think it is a matter of record and perhaps the record would be the best evidence but if counsel doesn't object I will ask you if you remember how many shares of stock came into this escrow as a result of this letter to which we have just referred? [88]

A. Well, I believe all of them. Ultimately 2,500 and some shares went through the escrow but I do not know whether they all passed through the escrow or whether I bought some of them direct without the escrow.

Q. Are we to understand that you acquired approximately 2,500 shares through this method of procedure?

A. Yes, I acquired, as I recall, slightly more than 2,500 shares.

Q. Slightly more than 2,500.

Now, that continued during what period of time? The letter went out on August 18th; how long did you continue that program?

A. Well, it was considerable time, six or eight or ten months anyway.

Q. Mr. Archer, there was some testimony yesterday by you to the effect that when you conferred with Mr. Lane in July of 1942 relative to going to work for American Pipe and Steel Corporation as an expediter, that you advised him of your interest in the Palos Verdes project and in the stock of that

(Testimony of Robert P. Archer.)

company and stated that you would consider going to work for American Pipe and Steel Corporation if they would advance you some money to assist you in your endeavors to acquire this stock.

Now, I want to ask you this: Did American Pipe and Steel Corporation advance any funds to you to enable you to [89] carry out your plan of acquiring the stock of Palos Verdes Estates?

A. They loaned me money.

Q. They loaned you some money? A. Yes.

Q. And was that advanced all at one time or from time to time?

A. It was advanced from time to time as I needed it.

Q. Can you tell us, if you remember, what was the total amount of the advance that you received from American Pipe and Steel Corporation?

A. I believe that they advanced between $6,000 and $7,000, ultimately, to acquire the stock, or rather to enable me to acquire the stock.

Q. Mr. Archer, I show you a note which purportedly bears your signature, dated—I beg your pardon—dated May 7, 1943, running to the American Pipe and Steel Corporation in the amount of $6,050 and I will ask you if that is your signature and if that is a note that you gave to the American Pipe and Steel Corporation at that time?

A. This is my signature and I gave them some notes and I guess that that is one of them.

Mr. Baird: We would like to offer this, your Honor.

(Testimony of Robert P. Archer.)

Mr. Maiden: We have no objection, your Honor, but I would like to have a copy of it, please, sir. [90]

Mr. Baird: We offer this note, if the Court please, as Petitioners' Exhibit No. 5. We will furnish counsel for the government with a copy.

Mr. Maiden: If you—you do not have one presently available, Mr. Baird?

Mr. Baird: I am sorry but we do not have another copy at the moment.

The Court: It will be received as Exhibit No. 5.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 5, and received in evidence.)

Mr. Baird: I am sorry, Mr. Maiden, that we do not have one here, but you will be furnished a copy.

Q. (By Mr. Baird): Now, Mr. Archer, I think I asked about this, but we got off of the track some way or another, and I did not pursue it:

About the period of time in which you were engaged in acquiring this stock for yourself, Robert P. Archer that is, can you tell us how long a period of time you were engaged in acquiring this stock in your own interest and for yourself and with the intention of having the stock for yourself?

A. Well, I believe—that is a little bit difficult for me to answer. But I would say that it could be for eight or ten months or a year. I know it was a slow process.

Q. Mr. Archer, at some point along the line in

(Testimony of Robert P. Archer.)

your [91] negotiations with Palos Verdes Estates, Incorporated, did you make any arrangements with American Pipe and Steel Corporation or with Mr. Jack Lane whereby they would take over the stock interests that you had acquired?

A. Yes, I became somewhat discouraged as to my ability to raise money to clear taxes, the state and county taxes. Meantime, the Archer Machine Products Company was progressing and I was getting involved financially with the American Pipe and Steel Corporation in a pretty sizable sum of money and I was in so deep that I could not stop so I recall that I offered to withdraw from the deal if they would, withdraw and turn over everything I had in it in the way of stock and would continue to assist in every way and would also continue to do what expediting they wanted me to do and that I would spend the rest of my time developing Archer Machine Products.

Q. Mr. Archer, did you have any discussion with Mr. Lane when you reached this state of discouragement that you have just related whereby you might work out some deal where you and Mr. Lane would take the stock over together as individuals?

A. Well, Mr. Lane and I talked, I talked to Mr. Lane about a number of possibilities in that respect and I cannot remember that we had any specific or whether it was any specific meeting, but I actually wanted to continue in it because I felt that the real setate possibilities there were very great, [92] but I was not financially able, at that time, to carry

(Testimony of Robert P. Archer.)

on; neither was I able to interest anybody in the proposal as readily as I had thought.

Q. Now, Mr. Archer, I am not sure that you can tell us this—you may not know at this time or may not remember. But, assuming that you had acquired all of the stock, what kind of an outlay of money would have been immediately necessary in order to pay the deliquent taxes, penalties, and assessments on the property; would that have been substantial or inconsequential?

A. Oh, it would have been around $90,000, it would be more than $80,000, as I recall.

Q. Something more than $80,000 or $90,000?

A. Yes, sir.

Q. And did you or did you not have available to you that kind of money? A. I did not.

Q. Mr. Archer, I want to show you a letter dated May 25, 1943, which bears your signature and is addressed to American Pipe and Steel Corporation, and I will ask you if that is your letter?

A. Yes, sir.

Mr. Baird: Mr. Maiden, I think you have a copy of this in your file.

Mr. Maiden: I do, if the Court please, and [93] Respondent has no objection to the letter.

Mr. Baird: We offer this as Petitioners' Exhibit No. 6.

The Court: It will be admitted.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 6, and received in evidence.)

(Testimony of Robert P. Archer.)

Mr. Baird: If the Court please, I am reluctant to take the time of the Court to read some of these documents..

Mr. Sullivan: May we have the exhibit number and the date of the letter again?

Mr. Baird: The date of the letter is May 25, 1943, and it is Exhibit, Petitioners' Exhibit No. 6, and I believe that you have a copy of it in your file.

I would like to read this. This is addressed to the American Pipe and Steel Corporation, 230 Date Avenue, Alhambra, California.

"Gentlemen: For some time I have been acquiring shares of stock in the Palos Verdes Estates, Incorporated, having a purpose in mind of electing a board of directors which would institute more aggressive policies in regard to the company's affairs.

"The company owns more than 700 lots which if sold as low as $500 each would bring $350,000. The company's name is well-established through years of advertising and [94] there is no reason why it should not handle a general line of various types of real estate throughout Southern California.

"Some of the lots that the company now owns are comparable to lots which have sold for prices ranging from $15,000 to $30,000 each in the past.

"The only disadvantages to the company are that it has very little working capital and that back taxes have accumulated against the property. These back taxes will amount to approximately $80,000 when penalties have been waived, and I am

(Testimony of Robert P. Archer.)

informed that the company intends to take the necessary steps to have them waived.

"Possibly you would be interested in putting up working capital or provide some other assistance in this program and I would like to discuss it with you. Yours very truly, R. P. Archer."

Q. (By Mr. Baird): Now, Mr. Archer, after you reached the conclusion that the financial burden was more than you could assume, will you state whether or not some arrangement was made, I believe you stated that some arrangement was made whereby American Pipe and Steel Corporation would take over—may I withdraw the question that I started to ask?

Mr. Archer, will you state whether or not you received an immediate and favorable response from the board of [95] directors of American Pipe and Steel Corporation to your proposal of May 25, 1943?

A. I didn't receive an immediate and favorable response.

Q. Well, the board of directors of American Pipe and Steel Corporation, in the course of the next two or three months, did they give you notification that they were willing to accept the proposal such as you had set forth in that letter?

A. Well, some months later I arranged to turn the stock over that I had acquired by my efforts and I made it over to them in return for cancellation of my financial obligations.

Q. Mr. Archer, will you state whether or not after you had been given the cold shoulder, so to

(Testimony of Robert P. Archer.)

speak, by the board of directors of American Pipe and Steel Corporation, did you and Mr. Lane, what arrangement, if any, did you and Mr. Lane have personally with reference to the acquisition of this stock?

I think that we touched on that before slightly.

A. Well, I had hopes that Mr. Lane would join in the deal with me because I was rather slipping as far as the financial end of it was concerned.

Q. Did you continue at Mr. Lane's suggestion or otherwise to attempt to acquire this stock?

A. I continued to attempt to acquire this stock because [96] unless I could obtain pretty close to a hundred per cent or 70 per cent anyway, I couldn't accomplish very much of anything.

Q. Mr. Archer, do you know whether or not at some date in November of 1943, that Mr. Lane renewed his proposal to his board of directors, the American Pipe and Steel Corporation, about their coming into the Palos Verdes deal?

A. Well, I do not know what occurred because I was not on the board of directors of the American Pipe and Steel Corporation, but I understood that the matter was submitted to the board of directors and that I was relieved of financial liability and also what stock I had accumulated and I agreed to continue as an employee, as an expediter, and I also agreed to continue to work on this to consummate the transaction.

Q. And did you continue to work until the transaction was consummated? A. Yes.

(Testimony of Robert P. Archer.)

Q. And ultimately was all of the stock acquired, all of the outstanding stock?

A. No, it was about, well, I accumulated about 2,500 and then there was an assessment and I bid in 96 shares at the sale which were the only shares bid on or sold at this sale.

Q. And what sale are we talking about? [97]

A. The sale of stock under the assessment.

Q. Do you know the date of that sale?

A. No, I don't. I think it was toward the end of 1943, though.

Q. Mr. Archer, to refresh your recollection, may I ask you whether or not that sale may have occurred on or about the 2nd of December, 1943?

A. It could, yes.

Q. And that sale of stock had occurred to satisfy an assessment made, and which assessment had not been paid by stockholders. And how many shares of stock did you purchase at that sale?

A. Ninety-six, I believe.

Q. Ninety-six shares. Now, I will ask you whether or not that 96 shares added to the 2,500 or whatever the amount was that you testified to that you had previously acquired, constituted all of the then outstanding stock?

A. I didn't understand that.

Q. Well, you testified that you had acquired, as I recall, about 2,500 shares of stock. Then, the assessment was made against all of the stock, and at the assessment sale, you purchased 96 shares. So

(Testimony of Robert P. Archer.)

that when that transaction was over, the only shares were the 96 shares and you had them all?

A. Yes, sir.

Q. Now, what did you pay, if you remember, for those 96 [98] shares?

A. $40 a share plus 5 per cent penalty.

Q. Approximately $4,000?

A. That is right.

Q. $14,032, I believe would be the correct figure?

A. That is correct.

Q. And that was the amount that was purchased at that time and paid at that time? A. Yes.

Q. Now, Mr. Archer, at the time that you appeared at that sale of stock, did you advance your own money for that, that $4,032, or was that advanced by American Pipe and Steel Corporation?

A. That money was advanced by American Pipe and Steel.

Q. Will you state whether or not the purchase of those 96 shares was made for yourself, or were you then acting for American Pipe and Steel Corporation?

A. I was then acting for American Pipe and Steel.

Q. So that, at that point, December 2, 1943, American Pipe and Steel Corporation became the owner of all the stock of Palos Verdes Estates, Inc.? A. Yes.

The Court: What was the answer?

The Witness: Yes.

Mr. Baird: All right. The answer is "yes." [99]

(Testimony of Robert P. Archer.)

The Court: Mr. Witness, you have a habit of nodding your head instead of answering. This is not being televised.

The Witness: I am sorry, sir.

Q. (By Mr. Baird): Now, you continued, for some time, to work for American Pipe and Steel Corporation as an expediter?

A. That is right.

Q. What did you do after this Chemical Warfare Service contract had been suddenly taken away from American Pipe and Steel Corporation in October of 1943?

A. Well, they had other work to be expedited and I did whatever I was told to do.

Q. Did you participate in their efforts to procure other contracts with various war services?

A. Well, as much as I could. I was in touch, at that time, with various aircraft companies in this area, and I would, of course, convey any knowledge or information I had to Mr. Lane about various things.

Q. Now, Mr. Archer, you have resided here continuously for many, many years. Now, I will ask you to state whether or not in your opinion, in your judgment, or has your judgment about the potential market value of the Palos Verdes lots been sustained by the condition of Palos Verdes as it exists today?

Mr. Maiden: Just a moment, if the Court please. I object to that as being certainly irrelevant and immaterial. [100] Today, almost ten years after the

(Testimony of Robert P. Archer.)

end of the war, and all of the restrictions and limitations which were placed upon the development of residential properties has changed considerably and I submit that the question of what his opinion is as to what value of Palos Verdes real estate development at that time is the crucial and pertinent point and that to have him state what the situation is today neither sustains nor disproves what opinion he had back at that time.

Mr. Baird: Well, now, if the Court please, I am glad Mr. Maiden brought that up because I certainly think that we must have some clarification right here and now, and I want to state for the benefit of Mr. Maiden and his associates and for the information of the Court, that before we close these proceedings, that we expect to offer testimony at length and in detail with reference to the situation of Palos Verdes, not only as it is today, but also as it has been during the years from the date of December 2, 1943, down to date.

We must keep in mind and we think that it is tremendously important in this case that both Mr. Archer and Mr. Lane were experienced in the matter of real estate and experienced and familiar with the development of this area in this community and they both had in mind and must have had in mind and did in fact have in mind the potential possibilities of Palos Verdes.

And, as was stated in the letter of May 18th [101] —pardon me—May 25th by Mr. Archer, that some of the lots that had a very high basis and were then

(Testimony of Robert P. Archer.)

selling at a rather low basis, rather a low market figure, would have a very high potential value and evidence will be produced here that these very lots that Mr. Archer acquired at that time are now selling for $10,000, $12,000 and some of them $15,000 apiece.

Evidence will also be produced here, if the Court please, to show that Mr. Lane, the president of American Pipe and Steel Corporation, subsequently acquired a rather large bloc of these very lots which are the subject matter of our testimony here now, and that he has been offered a very substantial sum —I have forgotten the figure, but I believe it runs to something like $200,000 or $300,000, something of the kind.

Mr. Maiden: If you would pardon the interruption, just a moment here. If the Court please, I regret that I made the objection. I do not think that it is material, but if Mr. Baird feels that it is material, and he apparently does, he apparently concedes some materiality that presently escapes me, he may go into it. So I will withdraw my objection.

Q. (By Mr. Baird): Mr. Archer, the objection has been withdrawn, and you are permitted to testify, as I understand it.

A. I have forgotten the question.

Q. I will restate the question. I will ask you whether [102] or not you are familiar with the general situation at Palos Verdes today and as to

(Testimony of Robert P. Archer.)

what the very lots that you are interested in and which you acquired by reason of acquiring all of the stock, as to what those lots are selling for on an average? Can you give us a minimum or a maximum? I am not sure that you know that definitely, but you must have some idea.

Mr. Maiden: Just a moment, counsel, I do not know whether he has any definite knowledge or not. Let's find out whether he has himself any personal knowledge of what the lots are selling for today.

The Court: That would be the proper procedure.

Q. (By Mr. Baird): Mr. Archer, do you have some personal knowledge as to what the lots are selling for today? A. No, I do not.

Q. That disposes of that. Mr. Archer, you had some knowledge as to the history and the prices at which those lots had been sold for in that area in the past, did you not, that is prior to the time that you became interested in it?

A. Well, I had some knowledge that they sold for considerably higher than $500 a lot.

Q. Do you know whether any of them sold for as much as $10,000 or $15,000 a lot?

A. I have heard that, yes.

Mr. Baird: That is all, your Honor. [103]

The Court: You may cross-examine.

Mr. Maiden: If your Honor please, I am compelled to ask for a moment to make a telephone call relating to the time of meeting my wife who is coming to town at the noon hour. I would appreciate

(Testimony of Robert P. Archer.)

at least ten minutes recess at this time so that I may make the telephone call.

The Court: We will take a ten-minute recess.

(Recess.)

The Court: You may proceed.

Cross-Examination

By Mr. Maiden:

Q. Mr. Archer, I believe you testified that you went into the employment of American Pipe and Steel Corporation on August 12, 1942; is that correct, sir? A. Thereabouts, yes.

Q. And I believe that you stated that you were employed as an expediter? A. Yes, sir.

Q. And is it your testimony that that was the sole purpose of your employment? A. Yes.

Q. Now, Mr. Archer, I believe that you testified on direct examination the type of work, the work that an expediter did, but will you briefly tell me just what you did as an expediter for American Pipe and Steel Corporation? [104]

A. I called on many subcontractors for the American Pipe and Steel Corporation. The Weideman Company in Alhambra, Weber Trailer over on East Fifth Street, and they were, at that time, operating a large machine shop, Abegg & Reinholdt, and various other subcontractors that were producing parts and doing work for the American Pipe and Steel Corporation to get the work and parts completed and delivered.

(Testimony of Robert P. Archer.)

Q. In other words, American Pipe and Steel Corporation had subcontractors assisting it in the performance of its principal contracts?

A. That is correct.

Q. Did Mr. Lane contact you about coming to work for him prior to any discussions that you had with him about your acquiring the stock of Palos Verdes estates?

A. Well, now, I cannot remember that exactly, could have been, might not have been.

Q. Now, you testified that before you would agree to take this employment that American Pipe and Steel Corporation offered you that they had to agree to loan you the money to acquire the Palos Verdes stock and that was a condition that you put upon your employment by them?

A. Yes, I believe so.

Q. Had they not agreed to that you would not have taken that job with the American Pipe and Steel Corporation? A. Yes, that is right. [105]

Q. Now, what was your financial condition at that time, Mr. Archer? A. Rather bad.

Q. Were you broke, sir?

A. Very close to it.

Q. Were you looking for some manner or means to make some income while you were undertaking to get on your feet, so to speak, and starting this business which you say you commenced in 1942?

A. To a certain extent, yes.

Q. Well, is there any reason why you would have been adverse to taking employment with

(Testimony of Robert P. Archer.)

American Pipe and Steel Corporation at that time for that purpose?

A. No, other than the fact that the money involved was not very great in my opinion.

Q. But, as I understand it, it was sort of a matter of necessity with you, Mr. Archer, wasn't it? A. Not that much.

Q. Well, did you have places that you could go to at that time at greater than $100 a week?

A. I think I could have.

Q. Did you make any effort to find any place that you could go to where you would obtain in excess of $100 a week?

A. Well, I talked around.

Q. But would you mind telling us with whom you discussed [106] this?

A. Well, I checked around with some friends of mine at Lockheed Aircraft, John Rogers who was assistant secretary at that time, I believe, and I discussed the possibilities at Lockheed, but they were not too great. You see, I had a chattel mortgage in the amount of about $3,600 that was being paid off and that gave me a little something to live on.

Q. I believe that you stated that you had an unfortunate marital situation which, as I understood it, for all practical purposes, cleaned you out and you were having to start from scratch at that time, so to speak? A. That was pretty much the case.

Q. Now, can you give me the name, Mr. Archer,

(Testimony of Robert P. Archer.)

of the commanding colonel of the Chemical Warfare Service, the chief contracting officer at that time?

A. Do you mean the one that I knew personally?

Q. Well, what was the position of the one that you knew personally and then we will get back to my question?

A. He was a Colonel Robin English, and I believe he was the top officer of that division in this area.

Q. In this area? A. Yes, sir.

Q. And who was the plant representative on behalf of the Army in respect to this contract of American Pipe and Steel Corporation? [107]

A. The Chemical Warfare, do you mean?

Q. That is right.

A. I believe that Colonel English spent considerable time at the American Pipe and Steel Corporation.

Q. Didn't the War Department or the Chemical Warfare Service have a plant representative stationed at the American Pipe and Steel Corporation during the progress or the performance of the contract?

A. Well, I believe that they had an inspector there, but I do not remember who he was.

Q. In connection with your expediting work, do I understand that you had no contact with the officials of the Chemical Warfare Service?

A. Well—merely with Bob English.

Q. Now, just what were your contacts with Mr.

(Testimony of Robert P. Archer.)

English in connection with the performance of this contract?

A. Bob English was a personal friend of mine, more than a business friend, and I introduced Jack Lane to him, I believe when the contract, or before the contract was let.

Q. Specifically, my inquiry went to what contacts you had with Mr. English and for what purposes in relation to the performance of this contract after the American Pipe and Steel Corporation received the contract and was performing the contract.

A. I cannot recall that I had a great deal of contact [108] with Colonel English after the contract was let.

Q. Now, Mr. Archer, about how much of your time would you say was consumed in your job as expediter for American Pipe and Steel Corporation?

A. Well, I would say that, at times, I would spend all of my time and, at other times, if things were a little slack or lax, I would spend some time on my personal interests.

Q. Such as acquiring the Palos Verdes stock?

A. And the Archer Machine Products Company.

Q. I see.

A. But I always gave American Pipe and Steel first call on my services if they had things for me to do because I considered that I should do their work first.

Q. Then it was your understanding that when you went into the employment of American Pipe and Steel Corporation on August 12, 1943, that your

(Testimony of Robert P. Archer.)

duties principally would relate to the expediting work necessary in the performance of the Chemical Warfare Contract?

A. No, not particularly or specifically the Chemical Warfare Contract, but it would be any contract or any business that they had.

Q. Well, you were aware, at that time, that Mr. Lane expected to obtain that contract, were you not?

A. I do recall that he hoped to. [109]

Q. Now, Mr. Archer, I believe that you testified that originally you were the only one, that is as between you and American Pipe and Steel Corporation or Mr. Lane, who was interested in acquiring this stock of Palos Verdes.

A. Yes. In fact, I wanted it that way.

Q. And I believe that you testified that you felt the prospects of profitable real estate operations of Palos Verdes were such at that time that you wanted the stock for yourself?

A. Yes, that is correct.

Q. Now, Mr. Archer, what personal finances did you yourself have at that time that you were able to tap or that were available to you for the purpose of acquiring this Palos Verdes stock?

A. Well, I acquired money, I got money from the American Pipe and Steel Corporation.

Q. Outside of the money from the American Pipe and Steel Corporation, what money did you have which you could turn loose of for the purpose of acquiring this stock?

A. Well, I had three lots over on the east side

(Testimony of Robert P. Archer.)

near Atlantic Boulevard, near Atlantic and Monterey Park, and I sold those lots at some time during that period. I do not recall just when. I also had a chattel mortgage as a part payment for the Archer Film Laboratories that I sold in the early part of 1942. I sold that business out for $6,500 and I received some cash and I had a chattel [110] mortgage.

Q. Well, why was it, then, Mr. Archer, if you had those sums of money, and in view of the fact that you were going to only offer $2 a share for the stock, did you consider it necessary to get an agreement that American Pipe and Steel Corporation would let you have the money to acquire it with?

A. I was paying alimony for one thing.

Q. Then the fact of the matter is that you had personally no money that was available to you for use in acquiring this stock even at $2 a share?

A. No, sir, that is not correct. I had some money but it was very limited.

Q. It was so limited, in fact, that you did not feel like you could acquire this stock yourself on your own money at $2 a share; isn't that a fact, Mr. Archer?

A. Yes, sir, and get enough stock.

Q. Now, let's go back just a moment, Mr. Archer, to the time when I believe that you stated in 1942 that you either, either you or Mr. Haggott sought one another out respecting the possibilities of your acquiring the stock of Palos Verdes. Do you recall just how that contact was made with Mr. Haggott?

(Testimony of Robert F. Archer.)

A. Well, that was 12 years ago, and I cannot remember too vividly, but I do recall that Mr. Haggott seemed anxious for me to become interested in Palos Verdes and that he had just about exhausted his own possibilities as far as [111] reorganization was concerned. He had been building and selling houses and he had the water company. I remember that Mr. Haggott was somewhat anxious to have someone develop those lots because they would provide customers for his water company. The water company I do not believe was making much money at that time, but by adding one or two hundred new users in the way of customers, it would be put, well the water company would be put on a very, nice, profitable basis.

Q. Well, what selling points or what points of attractiveness did Mr. Haggott present to you in his anxiousness to get you interested in acquiring this stock?

A. He pointed out that the property was worth considerable money on a per lot basis and that if I could acquire the stock in the company I could thereby acquire control of these lots and possibly do a little selling and make some progress in that respect.

Q. Was that the only point of attractiveness to a purchaser of the stock of that corporation that Mr. Haggott presented to you at that time?

A. Well, I believe so.

Q. You do not recall anything else?

(Testimony of Robert P. Archer.)

A. Not at the outset.

Q. Well, subsequently?

A. What do you want me to say?

Q. Well, just want to know whether or not there were [112] any other points of attractiveness which he presented to you and you stated that you did not recall any at that time.

A. As far as the attractiveness of this transaction to me was concerned, it was strictly the real estate that I was interested in. I was a real estate broker and he was a real estate broker and it was the real estate end of it that I was interested in.

Q. But you were, unfortunately, at that time you were a real estate broker without any finances, were you not? A. Not to any extent.

Q. Yes. A. I wasn't exactly starving.

Q. No, you had $100 a week from American Pipe and Steel Corporation in addition to your other assets.

A. I thought we were talking about before that even.

Q. Well, Mr. Archer, did Mr. Haggott tell you at that time when you were discussing the possibilities and the feasibility and the profitableness of a person acquiring or owning the stock of Palos Verdes at that time, that many defense plants had men employed full time in trying to find for them the defunct and bankrupt corporations with a large invested capital and large net operating losses in order that the defense plants could consolidate its

(Testimony of Robert P. Archer.)

operations with such an outfit as Palos Verdes and obtain tax benefits?

Mr. Baird: Just a moment—pardon me. Were you [113] through?

Mr. Maiden: Yes, I was through.

Mr. Baird: If your Honor please, I would like to interpose an objection on several grounds. In the first place, any statement made by Mr. Haggott to this witness would in no way be binding upon American Pipe and Steel Corporation or Mr. Lane. Secondly, we object to it because it is irrelevant and immaterial. Thirdly, we object to it because it is not proper cross-examination.

Mr. Maiden: If the Court please——

The Court: He may answer.

Mr. Baird: May I interrupt here for just a moment to inquire of the Court something that Mr. Maiden and I intended to inquire of the Court before we got started, and we have neglected to do it?

That is with reference to the matter of exceptions. Now, I will say to your Honor that it has been my understanding and I have done considerable research on it and I have been trying cases before this Court for some time, that since the changing of the Federal Rules, it has been my understanding and my belief now that we are not required to reserve an exception to a ruling on evidence.

The Court: That is my understanding.

Mr. Baird: The thing that gives me concern is, if the Court please, it is the fact that I pick up this

(Testimony of Robert P. Archer.)

Tax Court [114] Manual of the Commerce Clearing House for 1954——

The Court: I have never seen it.

Mr. Baird: ——wherein it is stated that an exception should be preserved, and I am just wondering if there has been a ruling or decision to that effect.

The Court: Nothing that I know of.

Mr. Baird: Then may it be understood—Mr. Maiden stated to me that he would like to join with me in this request—that for the purposes of this proceeding that any objection that we make which is not sustained or any motion we ask for which is denied will be deemed to be excepted to and our exceptions preserved?

The Court: You may so understand.

Mr. Maiden: Now, will you read the question, please?

(The question was read by the Reporter.)

The Witness: I do not recall that he discussed that with me.

Q. (By Mr. Maiden): Do you say that he did not discuss that with you?

A. It is my best recollection that he did not.

Q. Mr. Archer, did you have any inkling or any idea at that time that defense plants engaged in war contract work in view of the high excess-profits tax were interested in acquiring such an affiliate with the circumstances related?

(Testimony of Robert P. Archer.)

A. I cannot say that I hadn't heard rumors to that effect. [115]

Q. In other words, you did know that that might present an attractive situation to a defense plant, that is owning the stock of the corporation possessed of those things that I mentioned in my previous question?

A. I cannot say that I knew that, but I had heard it from hearing conversations to that effect.

Q. Well, hearing conversations to that effect would bring it to your attention, would it not, Mr. Archer? A. It could, yes.

Q. Did you give any serious thought or consideration to that in becoming interested in acquiring Palos Verdes stock yourself?

A. No; I did not. As I said, I was interested in the real estate angle entirely at the outset.

Q. Well, since that would be an attractive selling point to a defense plant, you certainly would have taken that as one factor into consideration in deciding that you wanted to acquire this stock; isn't that correct, Mr. Archer?

A. Well, it is a natural assumption, but I had never had any reason to believe that American Pipe and Steel Corporation was making millions of dollars.

Q. I am not talking about American Pipe and Steel Corporation now. I am talking about the reasons which prompted you to become interested in acquiring the stock of a corporation engaged in the real estate operations and particularly in [116]

(Testimony of Robert P. Archer.)

view of the financial condition at that time of the Palos Verdes Estates and in view of the fact that it had lived a life of failure from a profits standpoint.

A. I had no interest in the tax angle at the time I started acquiring stock in the Palos Verdes Estates. I was not particularly familiar with corporation taxes, and my principal interest was in what I might be able to make or however I might be able to profit from the real estate angle. Does that answer your question?

Q. Well, in other words, your mind was so free from doubt at that time that you could make a profit in Palos Verdes real estate in the context of those times, sir, that you would not be interested in any other possibility such as selling the stock to a defense plant who wanted it to broaden their tax base?

Mr. Baird: Just a moment. If your Honor please, I am perfectly willing that this witness be cross-examined——

The Court: Will you please arise?

Mr. Baird: Pardon me, your Honor. But I think that it is out of order for Mr. Maiden to couch his questions in the form of southern oratory and simply go on indefinitely expressing his views of the situation and to persist in trying to get an answer from this witness when the witness has repeatedly said that he was a real estate man and a real estate broker and that his interest in that

(Testimony of Robert P. Archer.)

property was solely [117] for the purpose of acquiring it for real estate purposes.

Now, he has answered that several times and I do not think that we should be taking up the time of the Court and the time of all of us here in persisting in trying to get an answer out of the witness which obviously is not the right answer.

Mr. Maiden: Well, now, if the Court please——

The Court: I find it very difficult to follow the thread of your questioning, Mr. Maiden.

Mr. Maiden: Well, if your Honor please, the question in issue in this case is whether tax evasion or avoidance, using the words of Section 129, was the principal reason for the acquisition by American Pipe and Steel Corporation of the stock of Palos Verdes Estates, Inc. I think as a part of the determining what the motives were of American Pipe and Steel Corporation is to ascertain from Mr. Archer whether or not he was aware of the fact that defense corporations were acquiring this type of a situation for tax benefits and whether or not that interested him in deciding to try and acquire this stock.

The Court: I would say, Mr. Maiden, that I agree with you that it is competent evidence and pertinent at this time. Please try to make your questions a little less complex.

Mr. Maiden: Yes, sir.

Mr. Baird: May it further please the Court [118] that there is one statement that I would like to challenge and that is that there is no evidence before

(Testimony of Robert P. Archer.)

this Court which justifies Mr. Maiden incorporating in his statement which he has just made to the Court that it was a matter of common practice for defense industries in this area to be acquiring defunct corporations. There is no evidence to that effect at all in this record; and there could be no evidence brought here to show that.

The Court: You may proceed.

Mr. Maiden: Will you please read the question?

(The question was read by the Reporter.)

The Witness: I had no thought of selling this to a company of that nature that you describe at the time. However, I might add that I am not averse to considering the possibilities of anything that I am interested in.

Q. (By Mr. Maiden): In other words, you obviously had a profit motive?

A. I had a profit motive, very definitely; I wanted to get back on my feet.

Q. Now, you have stated that you do not recollect any discussion with Mr. Haggott in which he presented that to you as an attraction for acquiring this stock?

A. Yes, I stated that I didn't recollect any such conversation.

Q. Now, Mr. Archer, I believe that you stated that it [119] became paramount to you sometime in 1942 or 1943 that you simply would not be able to financially carry through with your project?

A. As best I recall——

(Testimony of Robert P. Archer.)

Q. Let me finish.

As best you can recall, when did you reach that conclusion?

A. Well, that is a difficult question for me to answer. I just cannot say, undoubtedly before this letter, though.

Q. That is the letter of May 25th, which is in evidence? A. I think it is May 19, 1943.

Q. It was my impression that that was the letter of May 25th, 1943, which is Petitioners' Exhibit No. 6.

A. Yes, that is correct.

Q. And I believe that this letter starts off, Mr. Archer: "Gentlemen:." It is addressed to American Pipe and Steel Corporation, 230 Date Avenue, Alhambra, California.

"For some time, I have been acquiring shares of stock in the Palos Verdes Estates, Inc., having a purpose in mind of electing a board of directors which would institute more aggressive policies in regard to the company's affairs."

Mr. Archer, did you expect that that would be a surprise to American Pipe and Steel Corporation that you had been acquiring that stock? [120]

A. No, I didn't.

Q. Did you feel that Mr. Haggott at that time was not carrying on as an aggressive policy in respect to Palos Verdes, which you could improve upon, that is that you could improve upon his policy?

A. I think that I could have improved it.

(Testimony of Robert P. Archer.)

Q. Did you in any wise criticize Mr. Haggott's methods of undertaking to make a go out of the business?

A. No. I think that he had just used up all of his ideas and I had some other ideas.

Q. And you had some fresh ideas, is that it?

A. I thought I had.

Q. Will you enumerate those ideas, Mr. Archer, that you expected to exercise and keeping it within the context of that time, sir, with respect to developing profitably the Palos Verdes venture?

A. My ideas were not tremendous, but I did feel that if I could acquire control of the stock of this company for $5,000 to $10,000, that if I could interest some investor—having been in the investment business, securities, stocks and bonds—and bringing an action to eliminate a portion or all of the tax encumbrances, that is state and county taxes, that I could certainly make myself some money out of this, and this was all proven later on because the American Pipe and Steel Corporation did make money out of this sale of real [121] estate.

Q. Tax-wise?

A. I am talking about in the auction. As near as I remember it or that I know is that they had an auction and they auctioned off these lots subject to taxes at a profit to the American Pipe and Steel Corporation.

Q. Did you call the sale of real estate to Mr. Dahlberg a profit to American Pipe and Steel Corporation?

(Testimony of Robert P. Archer.)

A. No, but it is my understanding, Mr. Maiden, that an auctioneer was called in and held an auction a short time after they took over my interest and the net proceeds of that auction to the public showed a small profit to the American Pipe and Steel Corporation.

Q. Do you know how much profit?

A. Possibly only $3,000 or $4,000.

Q. Well, now, coming back to our main point, I want you to enumerate to the Court if you will be kind enough to do so, sir, the projects and the efforts that you would spend or expend which Mr. Haggott had not expended and which you felt would improve the situation to such an extent as to make it attractive from a real estate standpoint?

A. Well, Mr. Maiden, there are 700 lots, and for $10,000 and an adjustment downward in the taxes, I felt that they would be a very cheap buy and if by owning control I could certainly get someone interested in putting money into such [122] a transaction that would make me money.

Q. You understood and knew Mr. Haggott had racked his brain and *sold* at that time trying to find someone who would take it over for the purpose of a real estate development; isn't that correct, Mr. Archer?

A. That is correct, but Mr. Haggott was not in a position to go and get a hundred per cent of the stock and impose an assessment on those that did not sell, which I was willing to do.

Q. Why wasn't he in a position—I am not talk-

(Testimony of Robert P. Archer.)

ing about Mr. Haggott himself personally, but any other person could have done what you did, isn't that true? A. Yes, sir.

Q. Well, now—strike that.

Was it your understanding that even after acquiring the stock of Palos Verdes that there would have to be raised considerable amount of capital with which to furnish operating capital and with which to discharge and satisfy the huge amount of overlying taxes on the property?

A. Yes, it would take capital.

Q. Would you explain to the Court now, Mr. Archer, where, at the time, you became interested in acquiring this stock which you have placed at some time in 1942, where did you expect to obtain such capital?

A. Well, I did not feel that it would be very difficult [123] to interest men of substance in property of that nature.

Q. You mean that you did not feel that way after Mr. Haggott had not been able to influence anybody of means along the same lines?

A. I certainly did.

Q. In other words, you thought that Mr. Haggott had not completely exhausted that field?

A. I felt that I could do it even if he couldn't.

Q. Well, now, before stepping in the water, so to speak, Mr. Archer, before plunging in, did you look around to see what financial backing you could get from some person of substance with respect to this project?

(Testimony of Robert P. Archer.)

A. I took Mr. Ralph Huntsberger, formerly director of the Fidelity Savings and Loan, down to look at the property and he was a man of considerable money. I discussed the matter at one time with a man in the Mortgage Guarantee Company, but in all instances they were not interested in doing anything or committing themselves to any money or to any amount until the thing was under control.

Q. Would you say that they were not interested until you had actually gained control of it; is that correct, sir?

A. I didn't have anything to offer them, did I?

Q. Well, I know, but you told them that your plan or desire to acquire this stock for the purposes, you told them what your purposes were and I presume that you explained to [124] them that you considered it a wonderful buy with prospects of considerable profit; is that not correct, sir?

A. Yes, of course.

Q. But unfortunately they did not agree with you; is that right, Mr. Archer?

A. They were not discouraging at the time, but they said they were not ready to do anything until I had control of the corporation.

Q. Well, did you testify under oath, Mr. Archer, that any of these financial men or institutions to whom you went at that time—pardon me—I mean will you testify under oath, Mr. Archer, that any of these financial men or institutions to whom you went at that time indicated to you that if you did

(Testimony of Robert P. Archer.)

acquire control that they were ready to put in the money sufficient to put it on an operating basis?

A. No, sir, I would not, and nobody ever told me that. I have been told, however, that they would be very glad to talk about it when I was in a position with a concrete offer and on the strength of that I was willing to go ahead.

Q. Now, I just want to come back now to the time when you state you realized that you had to give up the ghost so far as you were concerned. What brought about that situation in your mind, Mr. Archer?

A. Well, in the meantime, Archer Machine Products Company was beginning to make me a little money and was taking a [125] little time, a little more time, and it was becoming difficult to acquire stock inasmuch as the easy sales or buys had been made and I was not too sure I could finance the project. I then asked Mr. Lane if he would care to go in personally, to go into the project personally with me, and he was a little bit involved as far as finances were concerned with his own company.

Q. Well, Mr. Archer, at that time, you were beginning to get some additional money from your machine shop operations, were you not?

A. Yes.

Q. Did you consider that that was not sufficient to continue to undertake the business of obtaining the remaining shares at $2 a share?

A. Well, I could not do everything. I had a job

(Testimony of Robert P. Archer.)

at the American Pipe and Steel Corporation, I had the Palos Verdes Estates deal and by that time, as I say, Archer Machine Products was taking a little of my time and the war situation as I recall was dimming the hopes of developing real estate.

Q. I believe that the last conditions or circumstances which you say existed at the time you gave up the ghost were that the Archer Machine Products business was developing and that you had a job with American Pipe and Steel Corporation. Now, let me ask this, Mr. Archer: Wouldn't it have been even more important to you in 1942 to devote all of your time and [126] attention to Archer Machine Products when it was just getting started off than it would have been a year or so later when it was operating and bringing in a profit?

A. No, as I endeavored to explain yesterday. There was a rather unusual situation connected with that. I was not a machinist. I had assisted a company, the D & F Tool Company, on some business financing. They decided that they wanted to abandon production work and do strictly tool and die work and I acquired through a loan at the Union Bank one machine. They had worked for the machine contracts and they said that if I would buy that machine it would accomplish two things for them: First, it would get them gradually out of the production work and would enable them to complete some unfinished contracts of production work, and they were very cooperative, and they provided men, inspection, supervision and, of

(Testimony of Robert P. Archer.)

course, they charged me for that, but there wasn't too much that I could add to it because, as I say, I was not a machinist or experienced machine shop operator.

Q. Well, did you become an expert machinist in 1943? A. No, I learned a little.

Q. Well, that is all beside the point. But, anyway, you were employed by American Pipe and Steel Corporation you state as an expediter during that time, yet in 1942 you did think that you had sufficient time to give all of these ventures, including your acquisition of Palos Verdes stock, [127] some of your time? A. Yes, sir.

Q. And one of the discouragements which I think you mentioned a moment ago was that by reason of the war situation the demands and the conditions or rather that people were not as interested in acquiring real estate at that time; is that correct, sir?

A. They became less and less interested as the war progressed.

Q. As the war progressed. So that that situation was more intense on December 2, 1943, than it had been in 1942 when you started the acquisition of the stock?

A. To a certain extent, I would say that that was true.

Q. You became increasingly aware, did you not, Mr. Archer, that by reason of the war restrictions upon construction and development that you would have to obtain priorities in order to get materials

(Testimony of Robert P. Archer.)

necessary for further development of Palos Verdes and further add to the attractive selling position of Palos Verdes?

A. Yes, sir. I cannot state exactly as to the dates of anything on the priorities and things of that nature, but some time along in that period priorities were required in the obtaining of material and the obtaining of material became difficult and I was not able to carry through a period in there that was evidently going to be necessary and that in itself [128] was discouraging for a man of my means.

Q. Did you or was it your understanding that American Pipe and Steel Corporation would be perhaps interested in acquiring Palos Verdes Estates and putting out the money required to put it on an operating basis?

A. I tried to sell them the idea.

Q. Did you suggest any amount of money that it would require to clear the property for operation and to furnish capital with which to make the developments necessary?

A. Well, the financial statement that accompanied our original letter would give any man in Mr. Lane's position a clue to the fact that it would require money.

Q. Was Mr. Lane interested in that aspect when you mentioned to him the prospects of American Pipe and Steel Corporation in taking over your holdings? A. I thought he did, yes.

Q. Mr. Archer, I believe that you stated that as

(Testimony of Robert P. Archer.)

a result of your letter of May 25, 1943, directed to American Pipe and Steel Corporation, which is Petitioners' Exhibit No. 6, that you didn't receive a very warm reception and I believe, to use the words of Mr. Baird, I believe he said that you received a cold shoulder.

Now, do you suppose you received a cold shoulder at that time by reason of the lack of your selling ability? A. Could have been. [129]

Q. I will ask you if it isn't a fact, Mr. Archer, and under your oath, sir, that you apprised Mr. Lane at that time that it would be a profitable venture for American Pipe and Steel Corporation in that American Pipe and Steel Corporation would have the advantage of the large invested capital, the large net loss carryovers of Palos Verdes Estates, and that under the tax rates at that time that they would reap tax profits?

A. I have no recollection of attempting to sell him that idea.

Q. Well, now, Mr. Archer, let's think about that very carefully. Now, you knew——

Mr. Baird: Just a minute, Mr. Maiden. May I interrupt? There was incorporated in that statement something that is not a fact, something that is not of record, and will not be of record. There were no net operating losses of Palos Verdes Estates, Inc., that would be carried over into these years, and we have made it clear, I think, in our opening statement, that we are not contending for any benefit as a result of losses, if any, that oc-

(Testimony of Robert P. Archer.)

curred before the acquisition of your company by American Pipe and Steel Corporation.

Mr. Maiden: I believe that I made it clear in my opening statement that they claim the benefit of losses in 1943, which was the subject matter of a previous docket before this Court and which was, as I stated, which was settled with [130] the understanding that it was not prejudicial to the rights of either party in respect to these subsequent years. And I will call the Court's attention to the fact in that connection that the facts in this case will show that almost immediately after this formal stock transfer on December 2, 1943, from Mr. Archer to American Pipe and Steel Corporation which they advertised and held within December an auction sale and they sold to Mr. Dahlberg, who I think was the only bidder, a large bloc of lots which resulted in a net operating loss for that period in excess of—how much was it, do you know?—resulting in a net operating loss of $32,521.10 which to the extent it was not used up in 1943 would operate as a carryover to 1944 and 1945.

And also——

Mr. Baird: But the thing is——

Mr. Maiden: May I continue, Mr. Baird?

Mr. Baird: I thought you were through; when you are through, I have something to say; as a matter of fact, I have quite a lot to say, if the Court will permit me to say it.

Mr. Maiden: Go ahead.

Mr. Baird: There has certainly been some con-

(Testimony of Robert P. Archer.)

fusion in the mind of Mr. Maiden. I know that there has been no intentional effort on his part to misstate the situation, but he was confused in his opening statement about this 1943 settlement and he failed to deliver—pardon me—he failed to [131] differentiate between the period from January 1, 1943, to December 2, 1943, and the remainder of the year, and it was my statement, which he failed to notice, that we were not claiming any losses which had accumulated or had occurred for the period prior to December 2, 1943.

Now, there was a short period of time in 1943, from December 2nd on, in which the contrary might be the case.

I do want to ask permission of the Court, and I think it is in order, that my associate, Mr. Hair, be permitted to explain to the Court what this 1943 settlement was because we are getting nothing but confusion in this record about that. That was handled by Mr. Hair; I had no part in it and was not counsel for the American Pipe and Steel Corporation at that time, and I am sure that Mr. Hair can explain to the satisfaction of Mr. Maiden and for the information of the Court exactly what was done there and what the effect of it was.

Now, before I resume my seat, I want to say that Mr. Maiden is also in error in his statement which he made, in his opening statement, that is, that there was an auction in December of 1943. There was no such auction in December of 1943. There

(Testimony of Robert P. Archer.)

was only one auction and that took place in January, in fact January 14 and 15 of 1944.

Furthermore, he has now just stated that the only bidder at the auction was Mr. Dahlberg. Mr. Dahlberg never bought a single lot at the [132] auction.

Now, if I may be permitted, I would like to have Mr. Hair explain that.

Mr. Maiden: Just a moment, if the Court please. There is no reason for any explanation and there is no confusion on my part.

Mr. Baird: You have confused us and no doubt the Court also.

Mr. Maiden: In my opening statement, I understood Mr. Baird to state that they did not and never had claimed benefit of any losses of Palos Verdes Estates for 1943. I did not understand Mr. Baird—for which I am sorry and apologize—that he limited that to the period January 1, 1943, to December 2, 1943.

Obviously, the American Pipe and Steel Corporation could not have claimed any benefits during that period because it had not yet taken the stock of Palos Verdes Estates over. But I do think that it is very clear that Palos Verdes Estates, that their books were closed on December 2, 1943, for the purpose of putting it on a calendar year basis on which basis American Pipe and Steel operated.

And that it filed a return, that is the combined, that is it combined its operations for its new calendar year which was for a short period of Decem-

(Testimony of Robert P. Archer.)

ber 2, 1943, to December 31, 1943, with American Pipe and Steel Corporation resulting in the enormous tax benefits. [133]

Now, as to the settlement in 1943 that exact question was involved whether or not the benefit to American Pipe and Steel Corporation by reason of consolidating its operations in 1943 with the operations of the Palos Verdes Estates, Incorporated, from December 2, 1943, that is the question that we have here except it is now spread out over a longer period of years for the benefits.

I might state that, in 1943, the American Pipe and Steel Corporation sustained a loss on the cancellation of its Chemical Warfare contract of some $125,000 or some $135,000 on that one contract alone.

However, American Pipe and Steel Corporation had enough profits in other operations of its steel fabricating business and I assume war defense work aside from the Chemical Warfare contract that it still showed a net profit of some $19,000. Now, obviously, and it is a fact that the deficiencies in that case amounted to about $4,000. It was settled and the stipulation was signed on the basis of something, oh, I think it was something like $3,000.

I do not see that we need any further explanation. I have no objection to it, sir, but I think it would take up an unnecessary amount of time.

Mr. Baird: Well, now, if the Court please, I may say that I am wholly at a loss to understand my friend, Mr. Maiden's, present statement because,

(Testimony of Robert P. Archer.)

obviously, it is not fair [134] to our side of this proceeding for him to stand there and take five or ten minutes as he has just done talking about the 1943 settlement and then saying that that is all that is necessary to be said. We think the thing is in a state of utter confusion and we think that he is confused about it and I think it should be cleared up. We have the man who negotiated the settlement and I think he should be permitted to explain.

The Court: Let's hear from him.

Mr. Hair: If your Honor please, I think that the difficulty here, the variance between Mr. Baird's opening statement and what Mr. Maiden has stated is in their approach to that word loss carryover. At no time either in the consolidated return for 1943 or at any subsequent time in any consolidated return did American Pipe and Steel Corporation attempt to carry over any net operating loss which had been realized by Palos Verdes Estates prior to the date on which American Pipe and Steel Corporation acquired the stock of Palos Verdes Estates.

Mr. Maiden: Of course, American Pipe and Steel Corporation couldn't have done that under the law.

Mr. Hair: I will agree that it couldn't and I say it didn't. But the variance between your statement and Mr. Baird's is based on the possible inferences which may be drawn from your statement that they did claim net loss carryover.

The Court: I understood from Mr. Baird that

(Testimony of Robert P. Archer.)

you were [135] going to tell us something about this short period.

Mr. Hair: The consolidated return of American Pipe and Steel Corporation for the year 1943 which was the calendar year included in it only the operations of Palos Verdes Estates, Inc., from December 2 to December 31, 1943. The only losses that were reflected in that consolidated return were losses that were realized by Palos Verdes Estates, Inc., after December 2, 1943. The question involved in that case was whether or not those losses were allowable in the consolidated return and had nothing to do with losses from a prior period and only related to losses realized after December 2nd of 1943.

We settled that case which involved Section 141 and stipulated that that settlement had no bearing on any future year or any matter whatever except that it was settled to get it off of the calendar.

It was arbitrarily settled and had no bearing on future litigation.

The Court: What are we talking about? I think that we have a lot of language here.

Mr. Sullivan: Might I clarify something that Mr. Hair said, just very briefly for clarification?

The Court: You may.

Mr. Sullivan: It is true, as Mr. Hair says, that the amounts at stake here pertain only to transactions consummated after December 2, 1943. But it would be misleading to [136] infer from that that the earlier history of Palos Verdes from the very beginning from its predecessors' conception and

(Testimony of Robert P. Archer.)

that was in the early 1920's, even including that trust which I believe, as a matter of fact, your Honor, disposed of in that calendar at Long Beach over twenty years ago, the invested capital of the Palos Verdes Estates and the basis for gain or loss on Palos Verdes lots that all originate over that entire period commencing back in the early part of 1920.

And I submit that they are a factor in the tax results from these transactions consummated after December 2, 1943, to which Mr. Hair referred.

The Court: I think that this has been discussed sufficiently. I understand that you have asked the witness a question. I understood that you objected to it, Mr. Baird.

Mr. Maiden: If your Honor please, I would like to make one statement before going into that.

I think that it is only fair, if the Court please, and if Mr. Baird please, that I should say, in view of Mr. Baird's statement, and I would like to say here that I was in error when I stated that an auction sale was held in December, 1943. I believe that the actual facts are that American Pipe and Steel Corporation immediately advertised in the papers for somebody or anyway offering this property for sale. And as I say, Mr. Dahlberg did purchase the only lots sold in December of 1943. I knew that Mr. Dahlberg had not purchased any lots [137] in the auction sale of January, 1944. I was simply mistaken in the use of the word auction in 1943 and I apologize for it. There is such a mass

(Testimony of Robert P. Archer.)

of facts here that it is hard sometimes to keep them explicitly and strictly in mind.

Do you—now, may I have an answer to my last question, please?

The Court: Do you know what the question is?

The Witness: I am afraid I don't.

The Court: Will you read the question?

(The question was read by the reporter.)

Mr. Maiden: I think I will restate it, or at least let me say this: It is then, Mr. Archer, your testimony that in your discussions with Mr. Lane about American Pipe and Steel Corporation taking over your holdings and acquiring Palos Verdes Estates, Inc., it felt that no mention or discussion was had with respect to the probable tax benefits that American Pipe and Steel Corporation would derive from the acquisition?

Mr. Baird: I submit that it is repetitious; it has been asked before and answered.

Mr. Maiden: I am simply asking him to state if that is his testimony.

Mr. Baird: It has already been stated that he has no recollection of such conversation.

Mr. Maiden: I would like to have him answer the [138] question.

The Court: I think it is repetitious, but he may answer.

The Witness: I do not have any recollection of discussing that with Mr. Lane.

Q. (By Mr. Maiden): Now, Mr. Archer, were

(Testimony of Robert P. Archer.)

your, or was your financial condition improving during 1943 as we come up to December 2, 1943?

A. Yes, sir.

Q. Were you in better shape financially then, sir, on November 1, 1943, than you had been?

A. My finances were gaining.

Q. They were gaining.

Now, I would like to inquire then, sir, why you were willing, at that time—I believe in November of 1943—to give up your holdings at no profit to you whatsoever if you believed in the profitable operations of Palos Verdes Estates for real estate purposes or for any profitable business purpose at that time?

A. Well, by that time, Archer Machine Products was becoming somewhat prosperous and requiring more of my time. I still had work to do for the American Pipe and Steel Corporation and in order to consummate anything constructively at Palos Verdes it would have been a full-time job and I would [139] either have had to abandon what I was doing and spend all of my time at Palos Verdes or neglect something else.

Q. And so for that reason and that reason alone you were willing to give up your profitable assets or your valuable assets without any profit to yourself whatsoever?

A. The profitable assets that you mentioned was only valuable if I could get somebody else interested in this thing with me, or I had the money to proceed or carry through. In the meantime, there

(Testimony of Robert P. Archer.)

was some, well I don't recall just when the taxes came up——

Mr. Baird: Are you referring to the real estate tax?

The Witness: Yes.

Mr. Baird: If I may be permitted, I can give you those dates.

Mr. Maiden: Oh, yes, sir; we will be delighted for your assistance, Mr. Baird.

Mr. Baird: July 27, 1943.

The Witness: And the result of that tax case had, I believe, some bearing on my willingness to give it up.

Mr. Baird: The interlocutory decree on August 22, 1943. And then there was a stipulation preceding that interlocutory decree on August 22, 1943. And then there was a stipulation preceding that interlocutory decree on July 30, 1943, and a final judgment in favor of the State of California [140] on May 15, 1944. Final judgment in favor of Palos Verdes on March 16, 1945. Those dates are all a matter of record, Mr. Maiden, and you can accept those as accurate.

Mr. Maiden: Yes, I do so accept them.

Q. (By Mr. Maiden): Just what was your response in connection with this tax suit, Mr. Archer?

A. Well, I said the tax suit had some effect or bearing on my judgment or my willingness to abandon the project that I had started.

Q. Why did it have any effect on you in that respect, Mr. Archer?

(Testimony of Robert P. Archer.)

A. Well, I was somewhat disappointed in that action and I believe that there was a time limit on the tax in which the taxes had to be paid that was a little bit of a shock.

Q. I see.

Well, that suit was brought at your instance, as the majority stockholder of Palos Verdes Estates, Inc., was it not? A. I would say so.

Q. I will ask you to state if it isn't a fact that in the petition that was filed one aspect of the prayer was that after these tax sales to the State had been set aside and invalidated and after the Court had determined the correct amount of taxes owed, you didn't also pray that you have a [141] period of six months from the entry of the decree of the Court within which to redeem the property by the payment of the taxes?

A. I do not recall that, but if the record shows it, it must have been so.

Q. Mr. Archer, who employed the lawyers to represent Palos Verdes Estates, Inc., sir?

A. Are you referring to Mr. Dahlberg——

Q. I asked who were—strike that.

My question was, who employed the attorneys to bring that suit? A. Probably I did.

Q. Will you state who paid the cost of the attorneys and the cost of the Court costs involved in this suit?

A. Well, no, I cannot answer that offhand.

Q. Do you have any idea of whether or not that

(Testimony of Robert P. Archer.)

money was furnished by American Pipe and Steel Corporation?

A. It could very easily have been, but I have no actual knowledge.

Q. You have no actual knowledge? A. No.

Q. Did you have knowledge of the fact that Mr. Dolley was and had been an attorney for the American Pipe and Steel Corporation at that time?

A. Yes, I did, and he was also my attorney [142] when I obtained a divorce.

Q. Now, Mr. Archer, this has not yet been introduced in evidence, but I know that Mr. Baird is going to introduce it. It is a letter dated November 25, 1943, and is on the stationery of the American Pipe and Steel Corporation, addressed to the board of directors of the American Pipe and Steel Corporation and signed American Pipe and Steel Corporation by Jack Lane, President.

Mr. Lane in this letter, Mr. Archer——

First, I might ask you, are you familiar with the contents of this letter and were you, sir, familiar with the contents of the letter at the time it was written?

A. I do not believe I was familiar with the contents of the letter at the time that it was written. I have seen portions of that letter within the last thirty days.

The Court: If you will have it identified, please.

The Witness: I do not know that I have ever read the letter.

(Testimony of Robert P. Archer.)

Mr. Maiden: I would like to have it identified as Respondent's Exhibit B.

(The document above referred to was marked for identification as Respondent's Exhibit B.)

Mr. Maiden: I have no intention of offering it, your Honor. I am just marking it for identification at this time. [143]

The Court: It has ~~been~~ so marked.

Q. (By Mr. Maiden): Would you just glance over this letter, Mr. Archer, and tell the Court whether or not Mr. Lane outlines in that letter ways and means of raising money to pay taxes on the lots and realizing perhaps clearance of taxes on some of the other lots?

A. Well, I don't believe I could without reading the letter. I actually do not believe that I have ever seen this letter.

Mr. Maiden: Well, if your Honor please, I would like to have him take the time to read it. It is just a three or four-page letter.

Mr. Baird: I will say that we have no objection to the letter going into evidence.

Mr. Maiden: The Respondent does not propose to offer that in evidence as its exhibit, your Honor. As a matter of fact, your Honor, Respondent may have some objection should Mr. Baird offer it in evidence.

Mr. Baird: We submit that what is going on here is wholly irrelevant and immaterial and a waste of time to ask the witness about a letter that

(Testimony of Robert P. Archer.)

he says he never saw and knew anything about at the time it was written, and I further submit that it is improper cross-examination.

The Court: I will sustain the objection. [144]

Mr. Maiden: Very well, your Honor.

Q. (By Mr. Maiden): Mr. Archer, you state that American Pipe and Steel Corporation made a profit of perhaps $3,000 on the sale of the lots in 1944; did you include in the profits column the sale to Mr. Dahlberg? And may I ask you also, Mr. Archer, why you could not without any further investments have done what American Pipe and Steel Corporation actually did do, that it put those lots up for sale and get what you could out of them and then abandon the rest? Would that have required a great deal of your time?

A. It would have required some time, but I possibly didn't think of it.

Q. You understood that the American Pipe and Steel Corporation, which was a steel fabricating plant, and though I do not know this to be a fact, but I imagine under the circumstances of the times, the war, that its activities in the operation of the plant were taken up with vital war work, yet under those circumstances you considered that American Pipe and Steel Corporation could devote full time to the development of Palos Verdes Estates so as to make it profitable.

A. Well, I frequently do not think of the other fellow's side of the deal as well as I do my own. In my own case, I was making progress at Archer

(Testimony of Robert P. Archer.)

Machine Products and since have done so, it is still in existence and did three-quarters of a [145] million dollars worth of business a year or so ago.

Mr. Maiden: If the Court please, I do not believe that that is responsive.

Mr. Baird: Just a minute. Let him answer the question and finish. You opened the door.

Mr. Maiden: I submit that it is not responsive.

Mr. Baird: And I submit that it is responsive.

Mr. Maiden: Will you read my question and read his answer?

(The question and answer were read by the reporter.)

Mr. Maiden: I submit that the last part of the witness' statement is wholly unresponsive.

The Court: He may continue.

The Witness: Also, the American Pipe and Steel Corporation has a large number of employees that they could put in charge of such a project and put somebody out there in charge of it which I, as an individual, could not do. I understand that American Pipe and Steel Corporation could not devote all of its time to that, but nevertheless they could put someone there that could do it much easier than I could as an individual, and much easier than I could do that and run Archer Machine Products and act as expediter for American Pipe and Steel Corporation when they needed me. And, as I say, under the circumstances, the project like Palos Verdes Estates—well, it is quite a project. [146]

(Testimony of Robert P. Archer.)

Q. (By Mr. Maiden): Was it your understanding—strike that out, please.

I believe, Mr. Archer, that, as soon as you had acquired a sufficient percentage of the stock of Palos Verdes Estates, that you caused the articles of incorporation to be amended so as to repeal a provision in the original articles which made the stock non-assessable for the purpose of making an assessment on the stock?

A. I believe I did that.

Q. You did that?

A. I did my best to. It was my intention.

Q. As a matter of fact, did you not cause the articles to be amended and did you not file such amended articles with the Corporation Commissioner's Office, and did you not advise the Corporation Commissioner's Office that an assessment of $40 per share would be made?

Mr. Baird: Just a moment, your Honor; we have the records on that and I submit that the best evidence is the records themselves. We have the minutes—we have the minutes here, and that will show all about the assessment, the changes in the articles of incorporation and the whole thing. We submit that the records should be offered if that is going to be important in this case.

The Court: He may answer the question.

The Witness: That is a long question. I will say [147] that I caused the articles of incorporation to be amended. I do not recall any discussion or

(Testimony of Robert P. Archer.)

any trip to this Corporation Commissioner's department to discuss that with them.

Q. (By Mr. Maiden): That is beside the point. You caused it to be done?

A. You asked the question, did I go to the Corporation Commissioner's Office, I think.

Q. I asked if you filed the amended articles or caused them to be filed, the amended articles with the Corporation Commissioner's Office, and advise the Office that this assessment would be made.

A. I do not recall advising them this assessment would be made.

Q. I will ask you if you don't know this to be a fact: That, in August, if it was under date of August 26, 1943, at a special meeting of the board of directors that the articles were so amended?

Mr. Baird: What was the date?

Mr. Maiden: August 26, 1943.

The Witness: Yes, I imagine that is true. I do not recall the exact date, but I do recall the articles were amended.

Q. (By Mr. Maiden): Now, I will ask you if it isn't a fact that shortly thereafter an assessment was made of $40 per share on the preferred stock of Palos Verdes, Estates, Inc.? [148]

A. That is correct.

Q. Now, at the time, I assume, Mr. Archer, you had not lost your hopes of keeping this as your own venture?

A. Well, I think that about that time I had more or less lost hope.

(Testimony of Robert P. Archer.)

Q. Would you explain to me, sir, why you would have caused the articles to be amended and the assessment to be made on this stock, what was the purpose of that, sir?

A. Certainly it would be much easier to dispose of a situation of this kind if I were losing interest, to any group of investors if I had control instead of partial control.

Q. In other words, the purpose then of that, sir, was to bring out those remaining stockholders who had not accepted your offer of $2 per share?

A. If you want to put it that way.

Q. That would be it, would it not, sir?

A. Yes.

Q. Now, Mr. Archer, isn't it a fact that at the time you caused this assessment to be made for the purpose which you have mentioned that you had no intention whatsoever of paying that assessment on the shares, or all of the shares that you then held?

A. That is absolutely correct. I did not have a hundred thousand dollars.

Q. I believe, at this time, you held 2,611 shares of [149] the then outstanding stock?

A. Pretty close to that. I do not know the exact figure.

Q. Now, Mr. Archer, from the contacts that you had with the shareholders in your efforts to obtain the control of Palos Verdes Estates, I believe you stated that it went over a period of some ten months to a year, it was not an easy proposition, and hadn't

(Testimony of Robert P. Archer.)

you reached the conclusion in your mind that if such an assessment was levied that those outstanding stockholders would not pay that assessment?

A. I believe I had.

Q. Now, Mr. Archer, do you represent here, sir, that it is purely a coincidence that you became employed by American Pipe and Steel Corporation on August 12, 1943, at which time you understood that Mr. Lane expected to receive this huge three-and-a-half-million-dollar war contract and the fact that, oh, I believe August 18 of 1943, you opened this escrow in the Bank of America at Redondo Beach and submitted the offer to the stockholders, do you claim that that was purely a coincidence and had nothing on earth to do with any interest on the part of American Pipe and Steel Corporation in having this stock of Palos Verdes Estates available to it and had nothing on earth to do with any possible tax benefits which it might receive on the profits and the profits, that is, [150] that it might receive or anticipated from the war contract?

A. It was no coincidence that I went to work for American Pipe and Steel Corporation on the 12th and the escrow was opened on the 18th of August. That was no coincidence.

Q. I mean are those events just related and, or do they have any connection with or relation to the subsequent transfer of your stock to American Pipe and Steel Corporation? A. No.

Q. None whatsoever?

A. As far as I recall, they do not.

(Testimony of Robert P. Archer.)

Q. Now, Mr. Archer, I call your attention to the fact, sir, that, in this escrow which you set up in the offer which was made under your signature, the offer was made under your signature as nominee.

Now, would you please explain to the Court whose nominee you were?

A. I was actually no one's nominee. How that expression happened to be used, I cannot explain.

Q. I presume that you had it typed up, did you not, sir?

A. I don't know whether I did or whether it was done by Mr. Haggott, but I know that he had the mimeograph machine and I did not.

Q. Do you have any idea why Mr. Haggott would put the word "nominee" there?

A. No. [151]

Q. Had you told him that you would be, you were to be nominee for American Pipe and Steel Corporation?

A. I don't believe I ever did. A nominee is a very common word in the stock and bond business, and I have been in the stock and bond business.

Q. But you usually appoint someone else to be nominee, not yourself? A. That is correct.

Q. As a matter of fact, you cannot be your own nominee. You are really acting as a principal.

A. I guess you couldn't be your own nominee.

Q. Mr. Archer, you did see that on there, you knew it was on there?

A. I undoubtedly saw it, but I didn't know it was on there until last month.

(Testimony of Robert P. Archer.)

Q. Well, you knew it was on there at the time you executed the deed; you signed it, didn't you?

A. Yes, sir, and I can see.

Q. And you do state that you saw the word "nominee" when you executed that?

A. I must have.

Q. I think I said that back there when you executed the deed I was mistaken; I mean when you executed this paper in which you are named under your signature as nominee.

A. I must have. [152]

Q. And you have no explanation to make to the Court, sir, why, if you were representing only yourself, and were not the nominee for somebody else, that that word nominee would be on there or that you would sign it as nominee when you knew that you were not a nominee?

A. I have no adequate explanation of the word nominee unless it was sort of a sales angle to get people to sell the stock.

Mr. Maiden: If your Honor please, I have promised to meet Mrs. Maiden on a matter of some importance at 12:15. May we recess at this time for the noon recess?

The Court: We will recess until 1:30 p.m.

(Whereupon, at 12 o'clock noon, the hearing was recessed, to reconvene at 1:30 p.m., same day.) [153]

Afternoon Session

The Court: Proceed.

Whereupon,

ROBERT P. ARCHER

resumed the stand and testified further as follows:

Cross-Examination
(Continued)

By Mr. Maiden:

Q. Mr. Archer, Mr. Baird introduced through you, I believe—yes, I think it was through you—a statement which you addressed to the stockholders when you set up the escrow. I believe the date of that was August 18, 1942. And I will ask you if, on the following day or thereabouts, another statement was made which includes something about people holding certificates of deposit that you were interested in acquiring those and for the reason that such certificate holders were entitled to surrender them for preferred stock?

A. Undoubtedly I did.

Q. Would you read that, please, sir?

A. All right.

"To the Preferred Stockholders of Palos Verdes Estates, Inc.: I hereby offer to purchase all of the outstanding preferred stock of Palos Verdes Estates, Inc., at the price of $2 per share. This offer is good for 15 days from date hereof and unless I can purchase 70 per cent [154] of said stock and/or certificates of the deposit within said

(Testimony of Robert P. Archer.)

period, I reserve the right to cancel this offer. If you desire to sell, please endorse your certificate or sign the attached stock power and forward the same together with the stock to the Bank of America, Escrow Department, Redondo Beach, California, with the enclosed instructions filled out. Should you hold deposit receipts entitling you to 12 shares of preferred stock per $1000 bond, I will purchase same at $2 per share preferred stock it represents."

Yes, that is dated August 19th, Mr. Maiden.

Q. Thank you, sir.

Now, Mr. Archer, in 1944, did you know that the president of Palos Verdes—beg pardon, I mean 1942—did you know that the president of Palos Verdes Estates, Inc., estimated the back taxes, including interest and penalties, at about $125,000?

Mr. Baird: Just a minute. I might say this: That I do not consider that type of cross-examination. We have not asked the witness anything about that at all. If counsel is going to persist in this type of examination, we are going to be here for two weeks.

Mr. Maiden: If your Honor please, I think that Mr. Baird's objection is unfair. This all goes to the question of the shape of the corporation financially as it was at the [155] time.

The Court: He may answer.

Mr. Baird: May I make the further objection, if your Honor please, then if that becomes material as to the shape of the corporation, I submit that

(Testimony of Robert P. Archer.)

the records of the Palos Verdes Estates, Inc., are the best evidence.

The Court: Objection is overruled.

The Witness: I do not remember the figure $125,000 specifically, but I do know that there was somewhere around $100,000 in delinquent taxes and penalties and I believe I have said the four are somewhere that I thought it was between $80,000 and $100,000.

Q. (By Mr. Maiden): I believe it is true, Mr. Archer, that you had no plans, no concrete plans, for any financing for the back taxes at the time that you stated you were interested in this from your own personal standpoint?

Mr. Baird: What do you mean by concrete plans?

Mr. Maiden: Any definite plans or ideas.

The Witness: I cannot say that I had any definite plans, but I had confidence in my ability to work something out or I would not have spent my time on it.

Q. (By Mr. Maiden): Now, Mr. Archer, I hand you here a letter dated January 28, 1943. It is on the letterhead of R. P. Archer—— [156]

A. 1953?

Q. I beg your pardon, 1943. A. Yes.

Q. And this letter is addressed to Mr. C. P. Walker, in San Marino, California, and I will ask you if you will identify that as a letter that you wrote and your signature?

(Testimony of Robert P. Archer.)

A. Well, that is not my signature. Would you care to have a copy of my signature?

Q. Do you deny the authenticity of that letter, Mr. Archer?

A. I haven't read the letter, but I can say that that is not my signature.

Q. Do you know whose signature that is?

A. No, I do not. I will be glad to provide you with a copy of my signature

Mr. Baird: Do you want a copy of his signature?

Q. (By Mr. Maiden): Mr. Archer, would you say that you dictated that letter and your secretary signed it for you?

Mr. Baird: Wait just a minute. Let's get the answer to one question.

The Court: You were asked if you wished his signature.

Mr. Maiden: No, he stated that it is not his signature, and that is good enough for me. [157]

Mr. Baird: Do you have a copy of his signature on that letter?

Mr. Maiden: No, I have another letter and that seems to be signed for him by someone else.

Now, if Mr. Baird cares to take the time of the Court to bring in the bank officials to identify these as having come from Mr. Archer's office, the government will be glad to do that.

Mr. Baird: I am going to take whatever time is necessary, Mr. Maiden, to try this lawsuit.

Mr. Maiden: And I don't want you restricting

(Testimony of Robert P. Archer.)

me in the time that I have to present the government's case.

Mr. Baird: May I be permitted to ask the witness a question out of order?

Mr. Maiden: You certainly can.

Mr. Baird: Mr. Archer, counsel for the government, Mr. Maiden, has exhibited to you a letter dated October 2, 1942, addressed to Mr. C. P. Walker, which bears the name of R. P. Archer. Now, I will ask you if that is your signature?

The Witness: No.

Mr. Baird: That is not your signature?

The Witness: No.

Mr. Maiden: Do you know who prepared that signature?

Mr. Baird: Just a moment. Does that correspond with the signature on the letter of January 28 which Mr. [158] Maiden presented to you?

The Witness: None of these signatures are mine and they do not compare with my signature and whether or not I authorized this letter to be signed, I cannot answer yet; I have not read them very carefully.

Q. (By Mr. Maiden): I show you a letter, Mr. Archer, dated October 2, 1942, again on your own letterhead, and addressed to Mr. C. P. Walker, and will ask you if that is signed R. P. Archer, by—and there are some initials down there? I will ask you whether or not you—pardon.

I will ask if you can identify who that was in your office with those initials?

(Testimony of Robert P. Archer.)

A. It is signed R. P. Archer and the initials appear to be "R. J."

Q. And do you know who that is, who has the initials "R. J."? A. No, I do not.

Mr. Baird: Wait just a minute. Let's keep the record straight. If your Honor please——

The Court: There seems to be an unusual amount of bickering and it seems very strange. You two lawyers know each other so well and there seems to be an unusual amount.

Mr. Baird: I agree entirely with that statement, your Honor, but I do want to say that I assume no responsibility [159] for it and the reason is that Mr. Maiden, as astute as he is, he keeps placing innuendoes in his questions which are not justified by the facts and are not supported by any of the evidence in the record. For example, in the last question, he said was that somebody in your office, and there is no evidence that it was signed by Mr. Archer.

Mr. Maiden: The fact is——

The Court: Just a minute. Read the question.

(The question was read by the reporter.)

The Court: It is a perfectly proper question.

The Witness: I know of no one with initials "R. J." that would have signed my name on this.

Q. (By Mr. Maiden): Mr. Archer, did you have the practice of dictating letters and authorizing girls or anybody in the office to sign them in your absence?

(Testimony of Robert P. Archer.)

A. Well, I cannot say that I had such a practice. I do not deny that it is possible that I authorized somebody to sign this. Is that what you want me to say?

Q. Yes, did you do that occasionally?

A. I could have, but as I have said it was 12 years ago.

Q. Mr. Archer, are you questioning the authenticity of that letter as having come from your office?

Mr. Baird: If the Court please, may we——

Mr. Maiden: Let me have an answer. Just a moment, [160] Mr. Baird, let me finish.

Mr. Baird: I want permission of the Court to get something clear. We are confronted for the first time in all these negotiations with the government that have been going on for years and now we are confronted for the first time with two letters that we have never seen before.

The Court: That is entirely possible.

Mr. Baird: That is very true, your Honor, but I might say that we might preserve the time of the Court and in the interest of fairness, if we could be permitted to examine those letters and see what they are. It is quite possible that we might agree with everything that counsel is trying to elicit and have no objection.

Mr. Maiden: Mr. Archer has been reading all the time that this has been going on.

Mr. Baird: If the Court please, counsel for the American Pipe and Steel Corporation does not know the contents, and there is uncontradicted evi-

(Testimony of Robert P. Archer.)

dence that neither of the letters were signed by Mr. Archer.

Mr. Maiden: I have not offered them in evidence as yet and, at that point, you can see them.

Mr. Baird: I have a right to see them before they get into evidence.

Mr. Maiden: May I have an answer to that last question? [161]

The Court: Objection is overruled.

Mr. Maiden: I certainly do not wish to impose upon the time of the Court but I certainly do believe that I have a right to inquire about the authenticity of these letters.

The Witness: Can I answer the question?

The Court: You may answer.

Mr. Maiden: Will you please read the last question?

(The question was read by the Reporter.)

The Witness: Do you mean, are you talking about this one, the first one, the October 2nd letter?

Q. (By Mr. Maiden): Both of the letters, the January 2nd and the October 28th?

A. You are asking if I question the authenticity of these letters?

Q. As having come from your office.

Mr. Baird: Do you understand what he means by that word "authenticity," Mr. Witness?

The Witness: I think that he means did I write these letters; is that correct?

Mr. Maiden: Yes, sir.

(Testimony of Robert P. Archer.)

The Witness: I have no recollection of writing these letters. Granted they are on letterheads that I used at that time, but I do not know that I did or did not. [162]

Q. (By Mr Maiden): Well, where do you think they would have come from, Mr. Archer? They are on your letterheads.

Mr. Baird: We object to that as being entirely irrelevant and immaterial and improper cross-examination.

The Court: Objection is overruled.

The Witness: They could have come from my office and they could have come from Mr. Haggott's office. They could have come from any number of places.

Q. (By Mr. Maiden): What would Mr. Haggott's office have been doing with your stationery?

A. I might have given it to him. I think I have said before I did not have a mimeograph machine for one thing and at that time I didn't have a secretary because, if you remember, I was not——

Q. Financially flush? A. That is right.

Q. And you could not afford a secretary?

A. That is right.

Mr. Maiden: If the Court please, the person to whom these letters are addressed, Mr. C. P. Walker, was one of the stockholders solicited by Mr. Archer for the purchase of his stock and Mr. Walker actually sold his stock, as the record will show, to Mr. Walker?

The Court: To whom? [163]

(Testimony of Robert P. Archer.)

Mr. Maiden: To Mr. Archer. Mr. Walker gave me these original letters out of his file and I had no idea, of course, because I had never seen Mr. Archer's signature and I thought that was his signature. On this other letter with the initials, I knew that that was not his signature because it clearly shows that it was by somebody else who I assumed was somebody in his office authorized to sign his name.

Now, if Mr. Baird wants me to, I shall ask the Court at a convenient time today to allow me to get in touch with Mr. Walker and have him come in and identify this as letters that he got or that came to him supposedly at his inquiry which he had made to Mr. Archer and these letters came to him and are part of his files with respect to the ownership of his stock and the sale of his stock to Mr. Archer.

If Mr. Baird does not think that necessary, why, then, I should like to offer them in evidence as being exactly what they purport to be, sir.

Mr. Baird: If the Court please, in commenting on that statement, I want to be crystal clear in this record as to what our position is. The record shows that counsel for the government presented the witness on the stand, Mr. Archer, a letter dated October 2, 1942, purportedly addressed to Mr. C. P. Walker. The first letter was January 28, 1942, addressed to Mr. Walker. Counsel for the government asked the witness if the signature at the bottom was the witness' signature. [164] The witness denies that it was his signature and counsel for the gov-

(Testimony of Robert P. Archer.)

ernment admits now that it is not his signature. Before we got to that stage in the proceedings, he produced another letter dated October 2, 1942, addressed to Mr. Walker——

The Court: Is this recital necessary, Mr. Baird? I heard all of his testimony.

Mr. Baird: I just want to be sure of it in the record because I know from past experience and practice in this Court that it will probably be ninety days before this transcript is read and I want no misunderstanding about it and I do not want unfavorable inferences drawn against my client, American Pipe and Steel Corporation, or Palos Verdes Estates, Inc., by reason of the fact that we are objecting to these letters. We are objecting to them because they have not been properly identified and, furthermore, they would be, well, I do not know whether they are material or not; I have never seen the letters before; so we object to them.

Mr. Maiden: It seems to me, sir, that Mr. Baird is making a great deal to do about something that perhaps, or he is making a great deal to do over something which he may not think is material.

Very well, I will present them in accordance with Mr. Baird's insistence, and present the proper authenticity of the documents the government has offered.

Mr. Baird: I may say that I tried to say it [165] before, that if we are permitted to examine those letters, it is conceivable that we would have no objection.

(Testimony of Robert P. Archer.)

Q. (By Mr. Maiden): Mr. Archer, I want to ask you whether or not, in 1942, when you say you were first approached by Mr. Haggott respecting your interest in this stock, I will ask you to state if you did not know then as a fact that lots of Palos Verdes Estates were offered to the public in 1941 and 1942 at a price equal to one-half of the unpaid taxes and the buyer to assume nine or ten years back taxes and if you also knew further that offers at any price were invited, but without success. You knew that, did you not, Mr. Archer?

A. I did not know that specifically. I knew that there had been considerable efforts to sell lots subject to taxes. I did not feel that it had been very well managed, had not been a very well managed sales campaign, and, as I put out this morning, I felt that I could do a better job of selling than Mr. Haggott had done.

Q. I see. And with your financial assets.

Mr. Maiden: If your Honor please, I likewise have from the Stockton Savings and Loan Bank at Stockton, California, a copy of a letter which they sent to me which was in their files as being written by Mr. Archer to them and I assume that there wouldn't be any question whatsoever as to the authenticity. I do have, however, the Stockton Savings and Loan Bank [166] under subpoena and they will come in and so testify so I will not pursue these things since it is apparent that the strictest type of proof is required.

(Testimony of Robert P. Archer.)

Mr. Baird: Mr. Maiden, I say again that if we may see the letter, we may not have objections.

Mr. Maiden: I would be very glad to let you see the letters but I handed you some a while ago and you did not even look at them.

Mr. Baird: I did not have an opportunity to look at them.

Q. (By Mr. Maiden): Mr. Archer, I will ask you if it isn't a fact that you represented to the Stockton Savings and Loan Bank of Stockton, California, on or about November 11, 1942, that the corporate structure of Palos Verdes Estates, Inc., had value to you only in the event that you were able to obtain 70 per cent of the outstanding stock?

A. Mr. Maiden, I do not have any specific recollection of that, but in my offer to purchase I said I would have to get 70 per cent or I would cancel the offer.

Q. Let's just assume for the moment—until I can put the proof in—Mr. Archer, that you did state to the Stockton Savings and Loan Bank that the corporate structure had value to you only in the event that you could get 70 per cent. What do you mean by corporate structure, sir? [167]

Mr. Baird: Wait just a moment. If there is anything in writing, I submit that the witness is entitled to see it before he answers that question. Now, the evidence is clear——

Mr. Maiden: I don't understand counsel's objection. I have asked and I have tried to put it in and they won't let them go in, and now I am ask-

(Testimony of Robert P. Archer.)

ing if that is a fact, I am simply asking the witness and he should know.

The Court: I think that the question is proper.

The Witness: Is proper?

The Court: Yes.

The Witness: And I should answer?

The Court: You should answer.

The Witness: Well, as I said before, this is 12 years ago and if I used the expression "corporate structure," I undoubtedly meant that I was desirous of obtaining the controlling interest in the corporation or a substantial interest in the corporation for the purpose of making a personal gain, making money, and that it was also my purpose to rehabilitate myself financially and that whatever I may have said in the way of using an expression like "corporate structure," I must have implied that I wanted control of that corporation.

Q. (By Mr. Maiden): Now, Mr. Archer, I believe that it is a fair statement [168] of your testimony that the reason why you set the figure at 70 per cent, that was approximately the amount of ownership that you would need in order to bring about this assessment on the stock of the stockholders who did not sell to you; that explains that, does it not, sir?

A. It would, and I would say that that was a safety valve in case that I could not acquire enough stock because it had been my experience previously in buying and trading stocks and endeavoring to get control of real estate situations or buildings and

(Testimony of Robert P. Archer.)

loan certificates, and that there was always a little difficulty in getting certain people to sell.

Q. Wasn't it your understanding, Mr. Archer, that you had to have around 66⅔ or about 70 per cent ownership of the stock before you could amend the articles and provide for assessing the stock?

A. I knew that, yes, I knew that to be a fact. I do not recall just when, but I am satisfied that I might have known it even then.

Q. And that would be the reason why you would want that amount at that time?

A. I think so.

Q. Now, Mr. Archer, I believe that you stated that you were not interested in this project actually unless you could acquire all of the stock of Palos Verdes Estates, Inc.?

A. Did I say that? [169]

Q. I think you did, sir; I may be wrong, but let's put it this way: I believe that you stated that the purpose of making this assessment of $40 per share which you admitted that you would not pay and had no intention of paying on your own stock, and that the purpose of that, sir, was to freeze out the stockholders who would not sell to you?

A. I believe that the question was asked at the time of the assessment was that my purpose; isn't that correct?

Q. Yes, sir.

A. At the time of the assessment considerable time had elapsed and considerable effort had been

(Testimony of Robert P. Archer.)

put into this thing. Going back to May 25th when I prepared that letter whereby I offered more or less my interest to the American Pipe and Steel Corporation.

Subsequently, I tried to interest Jack Lane as an individual to go into this real estate venture with me. He was interested. In fact, previous to that May 25th, Mr. Lane seemed to be and was personally very interested in it from a real estate standpoint. At his suggestion, as a matter of fact, I wrote the letter. He said, or rather he suggested that I write this letter to bring the matter to a head. I had called on a number of friends regarding financing and raising money, including Mr. Ralph Huntsberger, who had been vice president of Fidelity Savings and Loan when I was chief appraiser and he was very interested in discussing the [170] matter but he would not make a commitment. By the time of the sale and the assessment, my possibilities were getting a little bit on the slight side.

Q. And that, then, was the first time that it occurred to you to make an assessment?

A. No, I can't say that.

Q. When did you first conceive the idea of making an assessment, Mr. Archer?

A. I can't recall.

Q. You would say it was on or about the time that you offered to sell this to American Pipe and Steel and were rejected that you then undertook to get some financing?

(Testimony of Robert P. Archer.)

A. That is—could I have that question again, please?

(The question was read by the Reporter.)

The Witness: Well, I don't know that the facts set forth in that question are too clear or too accurate.

Q. (By Mr. Maiden): Well, I want you to understand the question before you answer it, Mr. Archer; otherwise it would be unfair, sir.

A. Well, then, I would propose to answer it in my own words to the effect that I discussed with Mr. Jack Lane before May 25th his coming into the deal with me as an individual and assisting in the raising of funds to pay taxes.

Q. Now, as a matter of fact, that was the understanding from the very inception of this, was it not, Mr. Archer, that [171] Mr. Lane was in on this and that actually you were acting as Mr. Lane's nominee? A. That is absolutely untrue.

Q. It is absolutely untrue?

A. That is right.

Q. Now, isn't it a fact, Mr. Archer, that when you first ran into resistance from stockholders, you told them that as soon as 70 per cent control had been gained by you, that an assessment would be put on the shares—I don't know that you specified any particular amount at this time—but isn't that a fact, Mr. Archer?

A. I don't believe that I did.

Q. Isn't it a fact that you used that in the early

(Testimony of Robert P. Archer.)

stages as a threat to those stockholders if they did not sell to you?

A. Well, now, I cannot say that that is not true; it possibly could be, and I don't recall, however, that I used that actually.

Q. Is it not a fact, Mr. Archer, that at the time you sent out this escrow offer to the stockholders accompanied by a statement of the analysis of Palos Verdes operations by Mr. Haggott, if it was not included and stated in Mr. Haggott's statement?

A. It is in there.

Q. Sir? [172]

A. It is in there.

Q. It suddenly comes to your mind, does it?

A. It is in there in Mr. Haggott's language that there may be an assessment.

Q. In other words, you had no idea of doing that, but this is just something Mr. Haggott put in there without your authority and knowledge?

A. I did not say that. I said I didn't know when I started thinking about it; isn't that correct?

Q. You do now agree that you were thinking about it at the very inception?

A. An assessment?

Q. Yes.

Mr. Baird: What do you mean "very inception"?

Mr. Maiden: At the time he opened the escrow and sent out letters to the shareholders soliciting the purchase of their stock at $2 per share.

Mr. Baird: If the Court please, may I clear up

(Testimony of Robert P. Archer.)

one thing? Counsel for the government keeps repeatedly saying that Mr. Archer did certain things or caused certain things to be done when, as a matter of fact, the record shows and this exhibit to which he now refers, that this went out over the signature of the president of the company and Mr. Archer was not then on the board of directors. He did make the offer as to what he would do and the president and the board of [173] directors assumed the responsibility of going along with that proposition and trying to put it into effect and it is not fair to try to impute to this witness everything that was done by Mr. Haggott whom I understand will be here as a witness for the government.

Mr. Maiden: If your Honor please, Mr. Baird himself offered in evidence as Petitioners' Exhibit No. 3, the very document to which I was then referring, which was a letter addressed by Mr. Haggott to the stockholders and which, as stated in his letter, contained the attachments. This letter was read into the record by Mr. Baird, I believe.

Mr. Baird: That is right, but that is a letter that the president of the Palos Verdes Estates, Inc., sent out and included an offer by Mr. Archer and that is all it amounts to.

Q. (By Mr. Maiden): Mr. Archer, did you go over with Mr. Haggott, did you go over with him, the preparation, and did you see the letter before it went out to the stockholders?

A. I presume that I did; I do not recall that I did.

(Testimony of Robert P. Archer.)

Q. Assuming that you did, you adopted that, sir, as a statement of fact and intention?

A. I wouldn't go that far.

Q. Well, assuming that you read this, Mr. Archer, you would have seen the statement would you not?

A. You mean regarding a possible [174] assessment?

Mr. Maiden: I am sorry but I cannot read this copy. I would like to see the exhibit that is in evidence.

The Clerk: You mean Exhibit No. 3?

Mr. Maiden: Yes.

Q. (By Mr. Maiden): I will ask you, Mr. Archer, to follow me as I read an excerpt on page 2 of the document which was read by Mr. Baird.

"In addition to providing some opportunity for salvage, this offer presents an opportunity to take the income tax loss on this investment during a year when income taxes are particularly high. We believe it fair to state that if this bidder is successful in obtaining acceptance of his offer by 70 per cent or more of the outstanding stock, that he indicates probability of amending articles of incorporation of this corporation so that an assessment against the stock can be levied."

Now, Mr. Archer, do you now state that you had no intention at the time that you started the acquisition of this stock of levying this assessment?

(Testimony of Robert P. Archer.)

A. No, I do not state that I had no such intention.

Q. Then you admit, sir, that at the beginning you did have that intention?

A. No, I don't state that I had any such intention. That was an alternative if I was not able to get enough stock. [175]

Q. Just a second—you stated that you set out to get 100 per cent control of stock of Palos Verdes Estates, Inc., that you wanted 100 per cent and you have also stated that in the event you could not obtain all of the stock that you would, or that you did, I believe, cause the articles to be amended and the assessment to be made for the specific purpose of fringing out those reluctant and unwilling sellers in order that you might obtain 100 per cent control.

Mr. Baird: Are you testifying, Mr. Maiden?

Mr. Maiden: I asked a question of the witness, Mr. Baird.

The Witness: If I testified to that effect—is that the question?

Mr. Maiden: Would you read the question? Mr. Archer is having difficulty in understanding my plain language.

The Witness: Oh, no, I am not.

(The question was read by the Reporter.)

Mr. Maiden: Is that the truth, Mr. Archer?

The Witness: Partly.

Q. (By Mr. Maiden): Will you tell us the part about it which is not true, sir?

(Testimony of Robert P. Archer.)

A. At the outset, I did not undertake to freeze out reluctant sellers. I did intend and I did desire to obtain [176] 100 per cent of the stock.

Q. Well, Mr. Archer, you did intend from the very beginning to freeze out those stockholders who would not sell to you, didn't you, if it became necessary, sir?

A. I would say that that was probably correct.

Q. Now, Mr. Archer, will you explain to the Court why it is that you insisted upon having 100 per cent of the stock of Palos Verdes Estates, Inc.?

A. Well, I was endeavoring to promote funds to rehabilitate the corporation.

Q. Will you answer my question, sir?

A. I am endeavoring to answer that.

Q. All right, sir.

A. You asked why I wanted 100 per cent.

Q. Why did you insist on having 100 per cent?

A. Because, Mr. Maiden, when you are promoting and selling an idea and an investment, it is particularly desirable to have 100 per cent because you are going to sell some interest in it, some interest in the undertaking somewhere along the line and I wanted to have something left for myself.

Q. I see. Well, now, let's see, Mr. Archer. Didn't you know that you could control the policies and actions of Palos Verdes Eestates, Inc., insofar as that is concerned with a mere majority of the stock holdings?

A. Well, I believe that I did; of course, I am not an [177] attorney.

(Testimony of Robert P. Archer.)

Q. Well, you knew that to be true, did you not?

A. I know it now.

Q. Is this the first time you ever heard of it?

A. No.

Q. You knew of it back at that time?

A. I am sure that I did.

Q. Now, Mr. Archer, I think that it has already been made clear why you fixed the 70 per cent figure so we will not pursue that point any further. I believe that you testified that after you received the cold shoulder from American Pipe and Steel in May of 1943, that you continued notwithstanding that you had lost all hope at that time, but notwithstanding that you kept acquiring this stock; could you explain that, sir?

A. Yes, sir. American Pipe and Steel declined to take over what I had done. And I sought the help of Mr. Lane and other friends and financial people in a last hope of getting money together to make some additional money for myself in Palos Verdes.

Q. In other words, notwithstanding prior testimony that on May 25, 1943—if it is not correct, the record will show that—you had lost all hope and realized that you couldn't go through with it and for that reason wanted to get American Pipe and Steel to take it over—— [178]

A. Did I say that?

Mr. Baird: I submit that the record does not show that the witness said that he had lost all hope.

Mr. Maiden: If your Honor please, if the record

(Testimony of Robert P. Archer.)

does show that, it will certainly stand on itself, but that is my best recollection of what the testimony was.

The Court: I think that counsel used that wording in his question.

The Witness: This question here or the one this morning?

The Court: The one this morning.

The Witness: All hope?

Mr. Maiden: Yes, sir.

The Witness: Well, these questions are so long and lengthy and Mr. Maiden is apparently trying to put words in my mouth——

Mr. Maiden: Now, I do not want to do that, Mr. Archer, and I am sure, sir, that you won't let me put words in your mouth.

The Witness: I am going to go or put on notice or be put on notice to that effect from here on. If I testified this morning that I had lost all hope, I would like to change that testimony as of now, because I hadn't lost all hope. I was quite discouraged, I will admit. [179]

Q. (By Mr. Maiden): And so after that, your hopes did revive and were sustained enough that you did go ahead and put more money into the purchase, into the acquisition of 100 per cent of the stock?

A. I would not say that I had great new hope, but hope springs eternal in the breast of a salesman and I have always been a salesman and a promoter.

Q. And a promoter? A. That is right.

(Testimony of Robert P. Archer.)

Q. Where you can get a profit out of it?

A. Yes, I will answer yes to that.

Q. I believe the record shows, Mr. Archer, that the American Pipe and Steel Corporation even after they allegedly rejected your offer of May 25th, continued to advance money to you in your alleged effort to acquire that stock for your own personal benefit; can you explain that, sir?

A. Well, I cannot remember that they did or didn't; I think their records would show, however.

Q. Now, this may be a little repetitious and I do not want to be repetitious but I will ask you again in case it is not clear. Mr. Archer, in 1942, did you know that Palos Verdes Estates had net losses in every year of its history?

A. No. I knew that they had net losses in very large amounts, but I cannot say that I knew that.

Q. But you did make an investigation of the financial [180] condition and its history as a real estate project before you finally made up your mind to decide to try to acquire the stock, did you not?

A. I knew something of its financial background. I did know that there had been millions of dollars put into the company and felt that if I could acquire for $5,000 to $10,000 what had cost others millions, it wouldn't be too stupid an investment, in my opinion.

Q. Now, I will ask you, Mr. Archer, if it isn't a fact that in 1942, Palos Verdes Estates no longer owned the choice lots except maybe for a few scat-

(Testimony of Robert P. Archer.)

tered lots, owned no lots that were in areas that had been developed for utilities or even roadways?

A. It is my recollection——

Mr. Baird: Just a minute——

Mr. Maiden: Now, Mr. Baird, I think I have asked a proper question on cross-examination.

Mr. Baird: There has been nothing on direct examination with reference to this, your Honor, and he keeps constantly boring questions to this witness that were not part of the direct examination at all. If he wants to bring in proof of that kind, certainly that is better evidence than trying to elicit that from this witness. It is not the best evidence to say nothing of the fact that it is improper cross-examination and we object to it. [181]

The Court: He may answer.

The Witness: It was my opinion when I first started in this deal that a good part of the good lots had been sold but there were still a large number of very good lots available, I mean that were still owned by the company and that was proven in this subsequent auction where people, some 200 or more people, were buying them up just like that.

Q. (By Mr. Maiden): When was that?

A. This auction in January of 1943 or 1944—I don't remember exactly.

Q. You mean they were paying so much for

(Testimony of Robert P. Archer.)

these lots that Palos Verdes Estates, Inc., realized a stupendous net profit of $3,000?

A. They only sold part of the lots, didn't they?

Q. That is right.

A. Do you know that in the real estate auction on these subdivision operations, do you know how that operates, Mr. Maiden? It just goes fast, fast, fast.

Q. Well, Mr. Archer, didn't you know in 1941 and 1942 and didn't you so represent to the stockholders that property had been on the market in 1939, 1940, 1941, and that there were practically no bids or bidders at any price?

A. I may have represented that they were not selling but I do not recall using the word [182] "bidders."

Q. Why would you make that representation to a stockholder if you didn't know it to be the truth?

A. You used the word "bidder." I don't know where that came from.

Q. Use the word "bidder"?

A. That there was no bidders.

Q. Well, I may have used it, but it is just my southern accent that is wrong, I guess.

Will you answer the question?

A. What was the last question?

(The question was read by the Reporter.)

The Witness: The fact of the matter is that the property had been for sale for many years and hadn't been sold.

(Testimony of Robert P. Archer.)

Q. (By Mr. Maiden): I stated, sir, the years 1939, 1940, and 1941.

A. The property was available for sale at that time and the remaining properties had not been sold. That was very obvious.

Q. And isn't it a fact that you knew and so represented that they were asking for any bids and had very little success?

A. I do not recall saying that.

Q. You wouldn't have said that?

A. I might have.

Q. Well, Mr. Archer, I want to get one thing straight [183] right here. You would not deliberately have misrepresented the facts regarding Palos Verdes Estates and its prospects to the stockholders simply to obtain that stock, would you, sir?

A. Well, that is a kind of difficult question.

Q. Well, give me as good an answer as you can, difficult or simple.

A. From the stockholders' standpoint, they had had this property and this corporation for a number of years and had accomplished practically or very little, had done very little with it. I was egotistical enough to think that I could accomplish something if I had control of it.

Q. We will get to that in a moment. I want you to answer my question. Did you, during the time that you were trying to acquire this stock from the stockholders, deliberately and intentionally and for the purpose of inducing them to sell to you, misrepresent the facts regarding Palos Verdes Estates?

(Testimony of Robert P. Archer.)

A. I do not believe that I misrepresented the facts.

Q. In other words, sir, everything you represented to the stockholders with respect to Palos Verdes Estates and the reason why they should sell to you were true to the best of your knowledge?

A. I would think so.

Q. And you do represent, sir——

Mr. Baird: Mr. Maiden, if you have any representations, don't you think it would be fair to tell the witness what [184] these representations are and ask him if he made them?

Mr. Maiden: Mr. Baird, this is cross-examination and my case in chief is yet to come. I have a right to ask Mr. Archer these questions.

Mr. Baird: I submit that counsel is constantly arguing with the witness, if your Honor please.

The Court: I think that is right. The questions are argumentative at times.

Mr. Maiden: I am sorry, sir. I did not intend to do that. It is just at the moment that sometimes these things seem to. Would you repeat my last question so I can take out anything, take out any improper element that there may be in it.

(The question was read by the Reporter.)

Mr. Maiden: I have no inclination to pursue that further, your Honor. I think it has already been covered.

Q. (By Mr. Maiden): Mr. Archer, before get-

(Testimony of Robert P. Archer.)

ting on to something else—and I will have very little further—I want to ask you if you had any personal accountant or anyone else make a personal financial audit and investigation of Palos Verdes Estates, Inc., before you commenced your acquisition of the stock?

A. I don't believe that I did.

Q. You did not, sir? A. No.

Q. Mr. Archer, do you recall a Mr. Orville Vaughn of [185] San Francisco, California, who was the attorney for the Howard Foundation, which foundation owned either preferred stock or certificates? A. Well, the name sounds familiar.

Q. You would say that you did know Mr. Vaughn?

A. I might have; he might have represented—well, I remember there was a Howard owner.

Q. The Howard Foundation?

A. Yes, owned some stock or certificates.

Q. And that is the foundation established by the famous C. S. Howard, owner of Seabiscuit?

A. Mr. Sullivan would know about that.

Q. Mr. Archer, I will ask you to state whether or not you told Mr. Orville Vaughn on or about February of 1943 or even in 1942 this, or this in substance:

That you represented a corporation with war contracts and that you were desirous of acquiring control of Palos Verdes Estates, Inc., for the purpose of merging the two corporations with a view to increasing invested capital of the corporation

(Testimony of Robert P. Archer.)

that you represented and thus effecting a reduction in excess profits taxes?

Mr. Baird: Just a moment. Are you referring to some letter or document?

Mr. Maiden: I am laying the groundwork for impeachment of the witness. I am asking whether or not he made that [186] representation or that in substance to Mr. Vaughn and I want to say, I want him to say whether he did or did not.

Mr. Baird: I submit there is a letter or something in writing, if counsel is referring to something in writing, that the witness has the right to see it before he answers the question. Otherwise, he has not properly laid the groundwork for impeachment.

Mr. Maiden: If your Honor please, I have practiced law for many, many years and I know of no proper way to impeach a witness than to ask him whether or not on a certain time he made a certain statement to a certain party or made the statement in substance. And if he denies it, then I can confront him with that party to prove the contrary.

Mr. Baird: If your Honor please, if the document is in writing, I submit that under the rule as I understand it, the witness has a right to see it.

Mr. Maiden: I am referring to a memorandum.

Mr. Baird: Memorandum by whom?

Mr. Maiden: A memorandum written by Mr. Vaughn.

Mr. Baird: I submit that he has a right to see the memorandum before he answers.

The Court: He may answer.

(Testimony of Robert P. Archer.)

Mr. Maiden: Go ahead.

The Witness: I do not recall any conversation with Mr. Vaughn and I don't remember ever talking to Mr. Vaughn or [187] ever meeting him.

Q. (By Mr. Maiden): Do you remember ever writing him a letter?

A. Well, I would be more likely to have written him a letter because if you say he represented the Howard Foundation in San Francisco or Oakland, I would more likely have written him.

Q. I believe that you previously stated that where it was necessary, you got in personal contact with shareholders?

A. Yes, I did wherever I could.

Q. Well, Mr. Archer, do you deny that you gave that information to Mr. Vaughn?

Mr. Baird: Mr. Maiden, do you mean in what form, writing or oral?

Mr. Maiden: The substance of the statement, Mr. Baird, covered in my question. Did you or did you not make such a statement or representation to Mr. Vaughn?

The Witness: I don't believe I ever did.

Q. (By Mr. Maiden): That is good enough.

The Court: Any other questions, Mr. Maiden?

Mr. Maiden: Yes, sir, your Honor; I was just trying to find my notes.

Q. (By Mr. Maiden): Mr. Archer, did you know Mr. Guy Witter? [188]

A. Well, I know him when I see him.

Q. Isn't it a fact that you had direct contact

(Testimony of Robert P. Archer.)

with the office of Dean Witter & Co. and with Mr. Witter with respect to your efforts to purchase the stock of Palos Verdes?

A. I don't believe I ever talked to Mr. Witter about this matter. I have talked to Mr. Witter very seldom.

Q. Did you talk to anyone in Mr. Witter's office? A. About this matter?

Q. Yes. A. I don't believe I did.

Q. Do you recall that Mr. Witter's office actually handled for many of its shareholders the question of selling their shares to you or the actual selling of their shares to you?

A. I believe that they did. I believe that Dean Witter entered the picture in that they underwrote the original bond issue. I may have bought some bonds through their trading department or preferred stock. Having spent ten years as a member working for the New York Stock Exchange, I naturally knew Dean Witter. I cannot recall exactly, however, what I did with Dean Witter, but I know they were in the picture and I may have checked the market with them from time to time on stock and I think they may have contacted me. I am just not sure, but I do have a recollection that some securities brokers did call on me, or rather did call me on the telephone from [189] time to time about my offer because I was known on Spring Street at that time.

Q. Now, Mr. Archer, did you tell Mr. Guy Witter either by telephone or by letter or did you

(Testimony of Robert P. Archer.)

tell any member of his office that you represented a defense plant and that your principal was interested in obtaining the stock of Palos Verdes Estates, Inc., in order to broaden its base for tax purposes? A I——

Mr. Baird: Just a moment, please, Mr. Archer. Give me a chance to get my objection in. I want the record to show that first if it is in writing it is our position that the witness has a right to be shown the letter.

Secondly, if it is not in writing, we have a right to know to whom he made the statement.

Thirdly, we have a right to know when it was made and where it was made and who was present. None of these ingredients are in counsel's questions.

Mr. Maiden: If your Honor please, this is exactly the same situation as the previous one. I am asking Mr. Archer——

The Court: Objection is overruled.

Mr. Baird: I didn't understand your Honor.

The Court: Objection overruled.

The Witness: I do not believe I ever did. [190]

Q. (By Mr. Maiden): Do you, in other words, do you categorically deny that you did, sir?

Mr. Baird: I submit that the question has been asked and answered and it is simply repetitious.

Mr. Maiden: He said he didn't think he did.

The Court: Your question is not strictly proper. It has an inference in it.

Mr. Maiden: I am sorry, your Honor.

(Testimony of Robert P. Archer.)

Q. (By Mr. Maiden): Mr. Archer, I will ask you whether this is a fact: That, during the course of your effort to acquire this stock, you did not tell the chairman, the then chairman of the bondholders committee, and the attorney for the bondholders committee, that you represented a defense company which was desirous of obtaining the corporation for the purpose of consolidation so as to broaden its base for excess profits tax computations?

Mr. Baird: Just a moment. Will you indicate the individuals that we are talking about?

The Court: I was just going to ask counsel to specify the names of the persons, if he has them.

Mr. Baird: Who are these individuals?

Mr. Maiden: Very well. [191]

Q. (By Mr. Maiden): Mr. Archer, were you acquainted with Mr. F. J. Gay?

A. F. J. Gay?

Q. Yes, or E. J. Gay, do you recall a Mr. Gay?

A. No; I don't recall him.

Q. Do you know a Mr. John C. Tyler? As being on the bondholders' committee?

A. I do not believe I recall those names, either one of them.

Q. How about Mr. Harry R. Wiley?

A. The name does not sound familiar?

Q. Do you know the name of the attorney or the firm that represented the bondholders' protective committee?

A. No, I do not know exactly. I know that the

(Testimony of Robert P. Archer.)

firm of Gibson, Dunn and Clutcher were interested in some, well it was either in Palos Verdes Water Company or Palos Verdes Estates, but I cannot actually say whether they had any interest in this or I knew that they had.

Q. You knew them anyhow. And do you deny that you ever made such a representation to any person during the course of your effort to acquire the stock? A. I stated——

Mr. Baird: Please, Mr. Archer, let me get my objection in. I think that the time and the place should be given and the people who were present.

The Court: This was an all-inclusive question and [192] covers any time, any place, or any person?

Mr. Baird: And that is the reason that I am objecting, your Honor. I don't think it fair to the witness and I do not think it is a proper way to lay the foundation for impeachment. It leaves the witness entirely helpless and I think it should be pinpointed down to the time, the place, the circumstances, who was present, and all of that, so that his memory can be refreshed and he will not be taken unawares and entrapped, as I think Mr. Maiden is trying to do.

Mr. Maiden: If you will pardon me, Mr. Baird, I wish to assure you that I do not want to entrap the witness or leave any wrong inference as to anything that is not entirely true. I am interested only that the facts be developed in the case and that justice will be done to the party in whose favor those facts are. I will not put that as an im-

(Testimony of Robert P. Archer.)

peachment, as groundwork for impeachment, Mr. Baird, but as a proper direct question on cross-examination and I will repeat it, Mr. Archer.

Q. (By Mr. Maiden): Did you ever, at any time, during your effort to acquire and in the period of your acquiring the stock of Palos Verdes Estates, represent to a shareholder or to a party representing a shareholder that you represented a war defense plant and that your principal was desirous of obtaining the stock of Palos Verdes Estates in order to broaden its tax base? [193]

Mr. Baird: Now, just a moment. That is objected to if he puts it on that basis for the reason that any statement that Mr. Archer made would not necessarily be binding or conclusive or even reflected upon the American Pipe and Steel Corporation or Mr. Jack Lane. The testimony is that in the original aspect of this matter when Mr. Archer was acquiring this stock, he was acting on his own. Then we come to the second period where he and Jack Lane were considering getting together and then finally it came over to the American Pipe and Steel Corporation. There is no evidence in the record to indicate that he was an agent of American Pipe and Steel Corporation or authorized to make any such statement as has been by inferences indicated that he did make.

Mr. Maiden: All he has to do, if the Court please, is to answer the question.

The Court: He may answer.

The Witness: I don't believe I made that statement. I may have said a number of things in in-

(Testimony of Robert P. Archer.)

ducing people to sell stock but I don't believe I made that statement.

Q. (By Mr. Maiden): Regardless of whether they were true or not? A. Regardless.

Mr. Maiden: If your Honor please, if I may have a few minutes, I think that I can wind up the examination of Mr. Archer with a couple of questions. [194]

The Court: We will take a short recess.

(Recess.)

Mr. Maiden: No further question, if the Court please.

The Witness: Your Honor, may I have the last question and my answer read? I want to be sure that what I said.

The Court: Please read the question.

(The record was read by the Reporter.)

Mr. Baird: Were you through with Mr. Archer?

Mr. Maiden: Yes. I am through.

Redirect Examination

By Mr. Baird:

Q. Mr. Archer, I want to review just briefly one phase that has been covered to a considerable extent by Mr. Maiden so that we might be clear. That is this:

That, at the time you were going to work, or rather at the time that you went to work for American Pipe and Steel Corporation on August

(Testimony of Robert P. Archer.)

12, 1942, I believe that you testified that you entered into an arrangement whereby you would get funds, whereby you were to get $100 a week and in addition to that you would be advanced some funds or loaned some money so that you could pursue your efforts about acquiring stock at Palos Verdes; am I correct in that, sir?

A. Yes, that is correct, and I also had an interest and was working in Archer Machine Products and Mr. Lane was [195] aware of that also.

Q. Was it definitely understood between you and Mr. Lane, as the president and general manager of American Pipe and Steel Corporation, that you were permitted to continue with your own project, mainly the Archer Machine Products Company?

A. Yes.

Q. So that your only compensation, that is the $100 a week that you were getting for the part-time service, so to speak? A. Yes.

Q. Now, you have testified, I believe, that at the time you started out to acquire the stock of Palos Verdes Estates that your purpose was to develop it as a real estate proposition?

A. Yes, and to make some money off of the real estate, yes.

Q. Now, just to review this momentarily, there were approximately how many lots available in Palos Verdes at that time? A. 700.

Q. And if my calculations are correct, if you were to pay for them at the rate of $2 a share, that is for the shares outstanding of stock in the corpo-

(Testimony of Robert P. Archer.)

ration, that would have amounted to approximately $7,000, would it not? [196] A. Yes.

Q. So that you would have been getting, in effect, the 700 lots at $10 a lot; is that correct?

A. Correct.

Q. Those lots, however, would be encumbered by unpaid tax assessments? A. Yes.

Q. And will you tell us, please—you may have done it before, but it will not hurt to have it again stated—what you estimated the minimum amount that those lots might be sold for?

A. Well, I thought the lots should average from $300 to $500 a lot if properly handled and sold over a period of time and not at a salvage sale or a distress auction.

Q. So that the 700 lots which you were in effect acquiring for $10 a lot you would sell for from $300 to $500 a lot; is that correct?

A. That was my hope.

Q. That sale, however, would be subject to the encumbrance taxes?

Mr. Maiden: Pardon the interruption but, if your Honor please, although I hate to interrupt Mr. Baird on redirect examination, he is asking leading questions and I will have to object to them.

Mr. Baird: I admit that they are leading questions; [197] there is no question about that, but I thought that we could hurry along here to clear up some facts.

Q. (By Mr. Baird): Mr. Archer, I will ask you to state whether or not you were aware of the

(Testimony of Robert P. Archer.)

fact that it would be necessary for you to sell the lots subject to the taxes which were assessed against them?

A. Yes, unless I was able to raise money from other sources to pay the taxes or was successful in the litigation to have the taxes compromised down or eliminated.

Q. Do you remember now approximately what taxes were against the 700 lots?

A. I believe that it was around $70,000 to $80,000 and there would be some penalties—I am a little rusty on that.

Q. Now, in your negotiations with Mr. Lane at—strike that.

In negotiating with Mr. Lane after American Pipe and Steel—well, I believe you stated and that there has been introduced in evidence a letter dated May 25, 1943, to American Pipe and Steel Corporation which is Petitioners' Exhibit No. 3, I believe it is——

The Clerk: Exhibit No. 6.

Q. (By Mr. Baird): The Clerk tells me it is Petitioners' Exhibit No. 6. Now, I wonder if you could tell us, please, what were the [198] circumstances under which you wrote that letter of May 25, 1943?

A. Well, for some time previous to this date, I had heard that Mr. Kreiger who was also a part owner of the American Pipe and Steel Corporation was not quite as interested in Palos Verdes Estates

(Testimony of Robert P. Archer.)

as I was or that Jack Lane was because, well, when I say I was, I was very enthusiastic about it and Mr. Lane was somewhat enthusiastic, but Mr. Kreiger was not apparently.

Now, I do not recall that Mr. Kreiger ever told me this—I do not know Mr. Kreiger very well. And I believe that Jack Lane suggested that I make a proposal in writing to bring the matter to a head as far as American Pipe and Steel Corporation was concerned, and I had the impression that Mr. Kreiger was quite undecided.

Mr. Maiden: If your Honor please, I think that Mr. Kreiger should be called as a witness and testify what, if any, objections he had and whether or not he was a fly in the ointment.

Mr. Baird: This is not offered for the purpose of proving the truth or falsity of any statement that Mr. Kreiger may have made, but for the purpose of explaining what necessitated or caused Mr. Archer to write the letter of May 25, 1943, which is Petitioners' Exhibit No. 6. I think it is a perfectly proper question. [199]

The Court: He may answer.

The Witness: I also discussed with Mr. Lane the idea of him personally coming into this transaction with me because Mr. Lane is an energetic resourceful young man and he stated that, as I recall, that he could not go into this deal without first having it declined by the corporation or the board of directors inasmuch as he was president of American Pipe and Steel.

(Testimony of Robert P. Archer.)

So the letter, as near as I can recall, was written for the purpose of bringing this thing to a decision. In the meantime, I was running out of money because I had used what money I was making to expand the facilities of American—pardon me—of Archer Machine Products.

Q. (By Mr. Baird): Now, subsequent to this date of May 25, 1943, the date of your letter to American Pipe and Steel Corporation, the record indicates that certain litigations started with reference to the matter of the outstanding taxes and assessments against the properties in Palos Verdes Estates. And that is something that has been stipulated and it is something that is a matter of record.

But I would like to ask you this: Can you tell us briefly if you know what led up to the instigating of that lawsuit?

A. Well, it is something that I had in mind ever since [200] I started into the transaction, ever since I started with the transaction.

Q. Well, now, as a matter of fact, this was a lawsuit in the Superior Court on behalf of Palos Verdes Estates, Inc., against the State of California, County of Los Angeles, Los Angeles City High School District, Los Angeles City Junior College District, Los Angeles County Flood Control District, Palos Verdes Elementary School District, Palos Verdes Library District, City of Palos Verdes and South Bay Cities Sanitation District.

I notice from the file this—I am not sure Mr. Maiden, that this is in evidence. If not, I want to

(Testimony of Robert P. Archer.)

put it in evidence—that immediately after the filing of that complaint, a stipulation was entered into on July 30, 1943, in which counsel for Palos Verdes Estates, Inc., and counsel for all of the various political subdivisions named as defendants, that is the State of California and the various other entities, joined for the purpose of obtaining a decree.

Mr. Baird: Mr. Maiden, is there any objection to offering this stipulation?

Mr. Maiden: None whatsoever, if your Honor please.

Mr. Baird: I think, to make the record clear, that we should offer that as Petitioners' Exhibit next in order.

The Court: Exhibit No. 7 received. [201]

(The document above referred to was marked for identification as Petitioners' Exhibit No. 7 and received in evidence.)

Mr. Baird: Then we have attached to the stipulation of facts which was introduced at the opening of this trial, the interlocutory judgment in that proceeding which is a great many pages long, and which is dated on the 2nd day of August, 1943. So that it appears that a lawsuit involving a tremendous amount of money tried on the 27th of July, had reached a termination satisfactory to the parties concerned by an interlocutory decree on August 2nd of that same year.

Mr. Maiden: Are you asking a question?

(Testimony of Robert P. Archer.)

Mr. Baird: I am sorry. I don't mean exactly what I said. I mean that the suit was started on July 27, 1943, and the interlocutory decree according to our stipulation and according to the record was entered on August 2, 1943.

Mr. Maiden: It is so stipulated.

Mr. Baird: All right.

Q. (By Mr. Baird): Now, I want to ask you to do this, Mr. Archer: Will you explain, if you can, and if you know, how it came about that a piece of litigation of that magnitude could have been accomplished in such a short space of time and the rights of the respective parties be determined by a decree of the court in that space of time? [202]

A. Well, undoubtedly, and I recall that there was considerable negotiations between attorney, between my attorney and the county or the attorney for the state, and I believe that there had been a precedent established at that time because of some irregularity in assessments for a certain year and that they were following a precedent.

Q. In other words, are we to understand that this litigation, the result had been agreed upon between the county—I beg your pardon—between counsel for the respective parties, the attorney general's office representing California and also representing the various agencies of the state and the attorney for Palos Verdes Estates, Inc., prior to the time that the litigation had been filed?

A. I believe that that is true.

Q. And that is the decree that was the result

(Testimony of Robert P. Archer.)

of that agreement? A. Yes.

Q. And that negotiation? A. Yes.

Q. Now, Mr. Archer, was the decree in that litigation what you had hoped for and what you had anticipated when you, in 1942, became interested in the Palos Verdes Estates property?

A. No, I had hoped possibly, not expected, but hoped for a better settlement of the taxes.

Q. And to what extent had you hoped for a better [203] settlement of the taxes?

A. Well, I might have even hoped that the taxes would be eliminated from the tax rolls, at least there could be a lot of time in litigation during which time I would have had considerable time to work up a deal on Palos Verdes Estates.

Q. Now, between the date of May 25, 1943, when you wrote the formal letter to American Pipe and Steel Corporation at the suggestion of Mr. Jack Lane and November 25, 1943, the date on which you wrote the letter to his board of directors, what, if any, change had taken place in your situation?

A. You mean in my financial situation?

Q. No, I mean with reference to whether or not you were to continue to acquire the stock for your own personal interest or as to whether or not some arrangements were being worked out between you and Mr. Jack Lane.

A. We had a verbal understanding, Mr. Lane and I, that we would endeavor to raise money to pay the taxes and some working capital and make an earnest effort to rehabilitate the company for

(Testimony of Robert P. Archer.)

our own personal benefit to make a profit, but that we knew it would require some outside capital.

I took certain prospective investors down to see the property and I believe that Mr. Lane also did take some people down there, but I was not able to work out anything whereby I could get anyone to put up any large sum of money or commit himself to do so. [204]

Q. Well, in the event that you had been successful in raising your proportionate part or let us say one-half of the funds necessary, will you state whether or not in the event that the board of directors of American Pipe and Steel Corporation had its own interest in this, was it your intention and the intention of Mr. Lane that you two would handle it together as a joint venture of your own, as individuals? A. Yes.

Q. You were unsuccessful, however, in raising the funds that you thought you might raise; is that correct?

A. Yes, and one of the reasons was that this decree, this decree hurt us a little on account of the short period of time.

Q. The six months time limit? A. Yes.

Q. In other words, that six months time limit meant that the taxes had to be paid within six months of the date of the interlocutory decree?

A. Yes.

Q. Did you anticipate a short period of time like six months?

A. Not originally, no.

(Testimony of Robert P. Archer.)

Q. Now, coming down to the date of about November 25, 1943, did you have any discussions with Mr. Lane as to whether or not you should continue on in the enterprise or [203] whether American Pipe and Steel Corporation should take it over?

A. Well, I undoubtedly told Mr. Lane that time was running short and that I had borrowed money, considerable money from American Pipe and Steel Corporation and the time for redemption of these taxes was getting shorter and shorter and that if I could get out, I would be glad to turn what stock I owned into the American Pipe and Steel Corporation to cancel any obligations in the way of notes for funds they had advanced.

Q. And approximately how much had they advanced you in the way of funds?

A. Well, at what date?

Q. As of the date of November 12?

Mr. Maiden: If your Honor please, I have no objection to Mr. Archer giving his recollection of how much American Pipe and Steel Corporation had advanced him. I do submit though that the books and records of American Pipe and Steel Corporation would be the best evidence and inasmuch as I had caused a subpoena to be served on American Pipe and Steel, I should like to have Mr. Baird's assurance that those records shown be produced in court and will be shown in evidence by Mr. Baird.

Mr. Baird: Mr. Maiden, my attention is called

(Testimony of Robert P. Archer.)

to the fact, by my associate, that we have included in our stipulation [206] what that figure is so I think that there is no question that it is in the neighborhood of $11,000 and is so stated in the stipulation which you have signed and I have signed.

Mr. Maiden: Mr. Baird, at this moment, for fear I might forget it, I understand that they advanced these funds and that these advances were made at different times. So I should like to ask if you will have American Pipe and Steel bring in its books showing the entries on their books of the amounts advanced to Mr. Archer during this period and for all purposes which they advanced him money.

Will you do that, sir?

Mr. Baird: You may be sure that whatever books of American Pipe and Steel Corporation has, that they would be brought in and whatever they may show will be available to you before this trial concludes.

Mr. Maiden: Thank you, sir.

Q. (By Mr. Baird): Mr. Archer, did you have in mind at any time to set up a sales organization to sell the lots of Palos Verdes Estates, Inc.?

A. In the early days, I talked to Mr. Haggot about doing that and even talked to Mr. Lane subsequently about it. But Archer Machine Products was going along and it would have taken quite a good deal of time so we abandoned that idea. [207]

Q. Is that the reason why you began to fade

(Testimony of Robert P. Archer.)

out of the picture insofar as you personally were concerned? A. Yes.

Q. Now, Mr. Archer, with reference to Mr. Haggott, some inference has been injected into the proceedings by Mr. Maiden that you were trying to do something Mr. Haggott could have done as well. Have you any explanation as to why Mr. Haggott was not capable of or not in a position to do what you were trying to do?

A. Well, I do not know that I would want to go into anything like that. He is a very fine gentleman and a very good friend of mine.

Q. Well, as a matter of fact, he was in a fiduciary capacity, was he not? A. Yes.

Q. And he had some obligations to the preferred stockholders of the company of which he was president, did he not? A. Yes.

Q. And I will ask you if it isn't a fact that at the time he contacted you——

Mr. Maiden: I hate to interrupt but you are asking a leading question.

Mr. Baird: I think you are right. It is leading. I will have to admit to that. I do want to get along here if we can. [208]

Q. (By Mr. Baird): At the time that you had your first contact with Mr. Haggott, I believe you testified as to how that contact occurred; will you state what the purpose of that contact was?

A. Well, I think that the first time this ever came off, it is just a matter of something we talked about on just a personal visit.

(Testimony of Robert P. Archer.)

Q. Will you state whether or not he was seeking your advice or the benefit of your experience?

A. Well, I went down and looked at some houses that he was building and he told me about Palos Verdes Estates and very flatteringly said——

Mr. Maiden: I object to that on the ground that what Mr. Haggott told Mr. Archer is the best evidence and this would be indulging now in hearsay. I think that Mr. Haggott should be brought in to tell what he told Mr. Archer or any of the other principals involved in this proceeding.

Mr. Baird: It does not seem to me that it is hearsay, your Honor. I am trying to establish what took place first, at the first contact and this witness is one of the participants in it.

Mr. Maiden: I have no objection if Mr. Baird will present Mr. Haggott, but I submit that it is not proper for Mr. Archer to testify on behalf of Mr. Haggott.

The Court: He may testify the impression that he [209] got from conference with Mr. Haggott but may not quote his language. He may proceed.

Mr. Baird: I am not sure that I heard your Honor's ruling.

The Court: He may state the impression he got.

Q. (By Mr. Baird): What was the impression that you got from Mr. Haggott?

A. Mr. Haggott told me——

The Court: Just a minute. I said that you could not state his language.

(Testimony of Robert P. Archer.)

The Witness: Mr. Haggott gave me the impression that if I were to undertake to rehabilitate the company or put a little effort into his Palos Verdes Estates, Inc., that it was something that I could develop into something that would work out beneficially for me and for his water company. At first, I was not too interested, but subsequently I became interested in it, interested in the idea, and I was led to believe that I would have considerable cooperation from the president of Palos Verdes Estates, Inc., and also from the water company if I undertook this project of acquiring the stock and ultimately the company.

Q. (By Mr. Baird): Now, Mr. Archer, isn't it true that during that period from the latter part of 1943, or rather I will ask you [210] to state whether you know what the general condition was in this area with reference to the building of houses and housing projects of various kinds? Was it a period of great activity or a period of little or no activity?

A. Relying upon my recollection, I would say that the only housing that was going on was war housing at that time; of course, you know it was 1943 and we were at war.

Q. Was that on an extensive scale or on a minor scale?

A. Well, as I recall, there was quite a lot of activity in housing in war projects.

Q. During that period of time, the latter part of 1943, were you investing any of your earnings and any of your accumulations in Archer Machine

(Testimony of Robert P. Archer.)

Products? A. Yes, sir.

Q. And was that a period of expansion for you in connection with that industry?

A. Yes, it was.

Q. Can you tell us whether or not Mr. Haggott officially represented you in any of these proceedings about which you have testified?

A. In what proceedings?

Q. Well, in connection with the solicitation of the sale of stock, of contact with the stockholders?

A. Well, I would not say that he ever officially represented me. I was available at all times. [211]

Q. And isn't it a fact that you were not on the board of directors or an officer of the company at that time?

A. I was not on the board of directors or an officer.

Q. And isn't it a fact that the letters which went out addressed to the preferred stockholders containing a short brief offer by you was prepared under the supervision and direction of Mr. Haggott or his officers?

A. I cannot be sure of that. I have a rather, I think so, but the fact is I cannot be sure of that. I know that they had a mimeograph machine in the Palos Verdes Water Company office. I did not have one and I feel confident that a lot of this mimeograph work was done there.

Q. Will you state whether or not you have any independent recollection of having written out in longhand or having typed or had it typed in your

(Testimony of Robert P. Archer.)

office, these letters which went out to the preferred stockholders containing your offer?

A. No, I don't have any recollection of that.

Q. My associate suggests that we inquire as to what extent you were expanding the Archer Machine Products Company during the latter part of 1943. Will you state whether or not you acquired new equipment, new machinery, whether you were getting new contracts, or what was that situation?

A. New machinery and new contacts, yes.

Q. And what approximate expenditure of money and capital on your part did that entail? [212]

A. That is a difficult question for me to answer. I know that I was expanding as rapidly as I could and acquiring new equipment through priorities and certificates of necessity through the Air Force, but I cannot tell you how much money was spent on new equipment; but it would probably run around $8,000 or $10,000.

Mr. Baird: I think that is all.

Recross-Examination

By Mr. Maiden:

Q. Mr. Archer, do I understand then that you felt that the operation by you of your company, the Archer Machine Products Company, was a far more important consideration profit wise than the acquisition of the Palos Verdes Estates?

A. As of the end of 1943, I will say, yes.

Q. So you were getting at that time all of the

(Testimony of Robert P. Archer.)

war subcontracting work, I suppose, that your plant could accomplish; is that correct, sir?

A. More.

Q. More than it could accomplish?

A. Yes.

Q. And that was typical of machine shops and businesses engaged in that work either as a primary contractor or subcontractor, was it not?

A. That is correct.

Q. Now, you stated that, subsequent to May 25, 1943, [213] when you wrote the letter at Mr. Lane's suggestion to the American Pipe and Steel Corporation that you talked to Mr. Lane about getting him to go in with you personally on this venture?

A. That is right.

Q. For what reason, if any, did Mr. Lane give you for not agreeing to go in with you personally?

A. At that time?

Q. Yes, sir.

A. I guess he just—I believe he didn't have the $50,000 in personal funds available at that time.

Q. Did Mr. Lane tell you at that time that American Pipe and Steel Corporation would have $50,000 or whatever it took to save Palos Verdes Estates?

A. No, I don't recall that he ever said that.

Q. Now, Mr. Archer, with respect to this lawsuit that was brought to have these taxes and these tax assessments set aside for some technicality, you stated, I believe, that you were somewhat disappointed in the results you got or that you did not

(Testimony of Robert P. Archer.)

expect it or that you hoped that the taxes would be written off of the books.

Now, did you mean by that, Mr. Archer, that you really thought that the State of California and the County would absolve Palos Verdes Estates from the payment of any taxes on that property for the years involved? [214]

A. I said that I hoped that. I did not say that I thought so.

Q. You have had quite a bit to do in your experience with the handling of property and the paying of property taxes, have you not?

A. Yes, sir.

Q. Did it occur to you, as a real estate man and as a real serious hope, that the County of Los Angeles would absolve Palos Verdes Estates from paying any taxes?

A. No, but I hoped that there would be a more favorable compromise and that there would be some time and at the outset in litigation of that kind, it sometimes dragged on for some time. And I did think that during that period of time when the litigation would be dragging along a number of things could have happened. And in such a way I would, in effect, have an option on an awful lot of fine real estate and I would have time to work out various things.

Q. Now, I believe you stated that one of the things that finally caused you to offer to give up your holdings in Palos Verdes Estates for cancellation of the advances of American Pipe and Steel

(Testimony of Robert P. Archer.)

was that you did not know until this interlocutory decree came down that you would have only a period of six months in which to make redemption of the property; is that not correct, sir?

A. I believe that is so. [215]

Q. I will ask you if American Pipe and Steel Corporation would not have had even less time to accomplish this since it is alleged that they only actually acquired ownership of this stock on December 2, 1943?

Mr. Baird: I submit that that is argumentative, your Honor, and I think it is perfectly obvious from the record.

Mr. Maiden: You are right. It is too obvious. I will withdraw it.

Q. (By Mr. Maiden): Mr. Archer, when did you go off of the payroll of American Pipe and Steel Corporation?

A. Some time in 1944. I am not exactly familiar with the date, but their records would show that.

Q. So you were still working for them throughout 1943? A. Beg pardon?

Q. You were still working for them throughout 1943?

A. Yes, sir. Just a minute. There was one period when I worked for another company for a few months, some company in Illinois—yes, it was the Midland Ordnance, I believe it was, they were in Illinois and some friend of Mr. Lane's needed some help out here and I think that for two or

(Testimony of Robert P. Archer.)

three months I ran down and worked for them and also for American Pipe and Steel.

Q. And you received some compensation from this other [216] company? A. That is right.

Q. You don't know exactly when that was?

A. No, I don't. Their records will show it.

Q. Well, we will have the records of American Pipe and Steel Corporation and they should show it on the payroll.

A. That is right. When I was off of the payroll of American Pipe, I was probably on the payroll of Midland Ordnance.

Q. Was this Archer Machine Products Company of yours, was that a corporation or proprietorship?

A. It always has been a sole proprietorship and is now.

Q. Now, Mr. Archer, you knew that Mr. Haggott was working with you in getting your offer to the stockholders, did you not?

A. I felt that he was so operating with me, yes.

Q. Didn't you have direct knowledge of the fact that he was?

A. I never heard him talking to any stockholder, but I was pretty sure that he was helping.

Q. Did he ever tell you he was writing letters to stockholders and recommending that they take your offer?

A. I don't know that he ever recommended that they take my offer, but I know he wrote letters to the stockholders and that the tone of the letter was

(Testimony of Robert P. Archer.)

such that it encouraged people [217] to take my offer.

Q. You did not disavow any assistance you received from Mr. Haggott, did you?

A. Not as far as those letters were concerned.

Q. You accepted wholeheartedly his efforts, did you not?

A. I do not know what you mean by that. I appreciated any co-operation he cared to give me.

Q. Did you solicit co-operation from Mr. Haggott?

A. I don't believe I ever asked him for it.

Mr. Baird: If your Honor please, I do not get the point of this cross-examination. Mr. Maiden has pursued that, I think, for at least an hour.

Mr. Maiden: I am ready to quit so you can start. I believe that is all, if your Honor please.

Mr. Baird: That is all I have of the witness.

The Court: You may be excused.

(Witness excused.)

The Court: Call your next witness.

Mr. Baird: I will call Mr. Dahlberg.

Whereupon,

CARL B. DAHLBERG

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows: [218]

The Clerk: Will you please state your full name and address for the record?

The Witness: Carl B. Dahlberg, 260 Longley Way, Arcadia, California.

Direct Examination

By Mr. Baird:

Q. How long have you resided in Arcadia, approximately? A. Approximately four years.

Q. Are you a native of California, Mr. Dahlberg? A. No; I was born in Minneapolis.

Q. And about what time did you come to California to make it your home?

A. Oh, I went to school out here; I believe I have been here most of the time since I was about 12 years old.

Q. Did you, at or about 1935, attend the University of Southern California?

A. Yes, I did.

Q. What is your present position with American Pipe and Steel Corporation?

A. Vice president.

Q. And when did you go to work for American Pipe and Steel Corporation, that is, the last time, because, as I understand it, you have worked for them once before?

A. I believe it was in November of 1950.

(Testimony of Carl B. Dahlberg.)

Q. Now, going back into a little of the earlier years, [219] had you previously worked for American Pipe and Steel Corporation or for Mr. Lane in some capacity?

A. Yes; I worked for Mr. Lane from about 1932 until about 1935. And during that period, I believe I worked partially for American Pipe and Steel Corporation. Mr. Lane was in the oil business and at that time was also credit manager of American Pipe and Steel and I was, or, as I recall, American Pipe and Steel Corporation paid part of my salary during the time that I was working for Mr. Lane.

Q. Now, coming down to the year 1937, where were you employed at that time?

A. By the Celotex Corporation in Los Angeles.

Q. How long did you engage in that employment?

A. I was with them until January of 1952.

Q. Until January of 1952?

A. 1942, pardon me.

Q. 1942. And what type of work did you do with the Celotex Corporation?

A. Well, I was engaged in sales work. I started with them as a junior salesman and when I left I was in charge of their roofing and asphalt department for the West Coast division.

Q. And you left them in 1942?

A. That is right.

Q. Now, where did you go from there, Mr. [220] Dahlberg?

(Testimony of Carl B. Dahlberg.)

A. I went to work for a company in Baltimore, Maryland, called the Drycemble Houses, Inc.

Q. Will you spell that, please?

A. D-r-y-c-e-m-b-l-e Houses, Incorporated.

Q. And the headquarters, your headquarters at that time, were in Baltimore, Maryland?

A. That is correct.

Q. And that was beginning, I believe you said, in the year 1942?

A. I believe it was January or February of 1942.

Q. Now, will you tell us briefly what was the nature of the work of Drycemble Houses, Inc.?

A. We were engaged in the manufacturing and in some cases the erection of prefabricated houses.

Q. And can you give us some idea of the scale of operations in which your company engaged?

A. Yes. Our first project was for the Glenn L. Martin plant in Baltimore and there we furnished 1,750 houses, I believe.

Q. Can you describe to us briefly the nature of these houses and what your method of operation was?

A. Well, the system of prefabrication that we were using had been developed by the Celotex Corporation and by the Pierce Foundation of New York. The Pierce Foundation had spent upwards of half a million dollars developing this [221] system which used certain Celotex materials. Drycemble Houses, Inc., had the license for the use of

(Testimony of Carl B. Dahlberg.)

these materials and this system of construction in connection with housing.

Q. Now, in addition to the erection of these houses, or units, for the Glenn Martin Company, what, if any, work was done by your company for the Navy or for the Coast Guard?

A. Well, we erected housing units for the Navy at seven Naval bases in Florida. I do not recall the names of all the seven bases, but one of them was at Daytona, one was for the Coast Guard at Tampa, one was at Jacksonville and one was at Vero Beach and I do not recall right now the names of the other places.

Q. Can you give us some idea of the size of those projects?

A. I believe they totalled about 5,000 housing units.

Q. 5,000 housing units? A. Yes.

Q. And was that each one or all together?

A. In this case, these were multiple dwellings that I am referring to, housing units, apartments.

Q. Now, Mr. Dahlberg, I do not believe that you have told us what your connection was with that company; what was your particular function with that company?

A. After having been with the company about three or four months, I was made vice president and was placed in charge [222] of sales.

Q. And in that connection, was it necessary for you to negotiate any loans through various Federal housing agencies or anything of that kind?

(Testimony of Carl B. Dahlberg.)

A. In that particular company, we made no loans, but it was necessary to negotiate contracts with many of the government agencies that were interested in housing.

Q. And what, if anything, did you personally have to do in your capacity as vice president of the company with the negotiations of these government contracts?

A. Well, I usually handled the negotiations which meant the bidding of the project and negotiations on the terms of the contracts.

Q. Coming down to the period 1942, that is when you went with this company in Baltimore, were you in the travel status a considerable part of the time or was that something that may have occurred later?

A. No; I started travelling quite extensively about the middle of 1942 when we got the contracts in Florida and after that, we got some contracts in Texas and up in Canada and I was travelling practically across the country every couple of weeks or so.

Q. Did you have contracts during that period on the West Coast?

A. Yes. In the fall of 1942, we obtained one contract [223] for about 200 houses to be constructed along the Alaskan Highway in connection with the Canol Project. And about the same time we secured contracts for the erection of two hospitals, one a thousand-bed and one an 850-bed Naval hospital, located in California.

(Testimony of Carl B. Dahlberg.)

Q. That was what year?

A. That was in the fall of 1942. Pardon me. I think that was, I think that the latter projects that I mentioned were obtained by us in the spring of 1943.

Q. In the spring of 1943.

I will ask you whether or not it is a fact that your company, the Drycemble Houses, Inc., operated an office in Los Angeles during the latter part of 1943? A. Yes, we did.

Q. I hand you a photostat of a letter dated December 1, 1943, and ask you if you can identify that letter and if it bears your signature?

A. Yes, it does.

Mr. Baird: We would like to offer this as our exhibit next in order.

The Clerk: That will be identified as Petitioners' Exhibit No. 8.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 8.)

Mr. Maiden: If your Honor please, I have [224] no objection to this exhibit, but I am just wondering what the materiality is of the testimony that Mr. Dahlberg is now giving. Would you enlighten me on that, Mr. Baird?

Mr Baird: I will be happy to do that if it needs any enlightenment. Are you objecting to the letter?

Mr. Maiden: I said before, well before the letter is introduced in evidence and before your examination of Mr. Dahlberg along the present lines,

(Testimony of Carl B. Dahlberg.)

I would like for you to explain to the court what its purpose is and what materiality it has.

Mr. Baird: The record already shows that Mr. Dahlberg is a party to whom lots were sold in 1943. Now, it is true that, according to our stipulation, as I understand it, you are not questioning the loss on the sale of those lots by Palos Verdes Estates, Inc., to Mr. Dahlberg. But we do not want to leave the matter in the air and leave any unfavorable inferences to be drawn because of the facts that when it is brought out in the open there will not be any. We expect to have Mr. Dahlberg relate when he re-established himself in Los Angeles and for what purpose and how he came in contact with Mr. Lane in 1943 and purchased the lots in question.

Mr. Maiden: That is a sufficient explanation, Mr. Baird. You may go ahead, sir.

The Court: It will be received as Petitioners' Exhibit No. 8. [225]

(The document heretofore marked for identification as Petitioners' Exhibit No. 8 was received in evidence.)

Q. (By Mr. Baird): Mr. Dahlberg, without reading the letter, that is simply a letter of agreement between some landlord and your company which you accepted wherein you leased or rented office space in Los Angeles for the purposes of conducting your company business; is that correct, sir?

A. In the Architects Building, yes.

(Testimony of Carl B. Dahlberg.)

Q. Do you know how long you had been in Los Angeles prior to the time that you had negotiated with rental space for your company?

A. Oh, as I recall, it was a matter of not more than just two or three days possibly, that was my primary purpose in coming here, that is to open an office so I remember that I got onto that as soon as I could.

Q. Now, Mr. Dahlberg, about that time did you form another corporation known as Drycemble, Inc., the word "Houses" being omitted?

A. It was known as Drycemble, Inc.

Q. The Drycemble Corporation?

A. That was a California corporation formed in 1944.

Q. It was formed in 1944? A. Yes, sir.

Q. And what was the purpose and function of that [226] corporation?

A. The purpose of that corporation was to take over the West Coast business which had formerly been conducted by Drycemble Houses, Inc. and I made an arrangement with the majority stockholders of Drycemble Houses, Inc. that we would split the United States at the Mississippi River and I would take the rights for the West Coast for this system of construction that I previously mentioned and the eastern interests of Drycemble Houses, Inc. would retain the rights to the East Coast.

Q. Did your western corporation obtain some contracts and build some extensive projects?

A. Yes, we did.

(Testimony of Carl B. Dahlberg.)

Q. Briefly, what were they?

A. Well, we built several thousand housing units for the Federal Public Housing Authority in the Los Angeles area.

Q. Will you tell us where?

A. Some of the units were in San Pedro, others were in the eastern part of Los Angeles, some units were in Barstow, California, and we also constructed about a thousand units at Houston, Texas, for shipment to Great Britain.

Q. And did that require any negotiations for any financing with the FHA or other lending agencies?

A. No, it did not. At that time, I had adequate financing by reason of a joint venture which I had worked out with a [227] so-called West Coast Construction Company. Under that joint venture and under that agreement, I agreed to do the prefabrication work on their houses and agreed to use this system of prefabrication to which my company had the rights and the West Coast Construction Company agreed to finance the projects and to do the field direction.

That was the Wesco Construction Company.

Q. I will ask you whether or not, sometime in the latter part of 1943 or perhaps sometime prior to December, you had some contact with a man by the name of Johnson in Portland, Oregon, the Johnson Lumber Company—I may not have the name exactly right, but I think it is C. D. Johnson?

A. Yes, that is correct. The Navy hospitals that

(Testimony of Carl B. Dahlberg.)

I mentioned were undertaken jointly with Johnson who furnished all of the lumber components that went into the units.

Q. In other words, if I understand you correctly, the Johnson Lumber Company in Portland, Oregon, engaged with your company, the Drycemble Corporation, in a sort of joint venture to erect these hospital units?

A. That is right; yes, sir.

Q. What part did the Johnson Lumber Company play in the project; did they do anything other than furnish the material?

A. They did more than furnish the material because they actually constructed the wood portions of the prefabrication [228] houses which were quite an extensive operation and a contracted, the Johnson Lumber Company, well, they are the biggest lumber mill in Oregon and they had plenty of timber at a time when lumber was very short.

Q. During the period from along about 1932 or 1935 to about 1942 or 1943 when you returned to Los Angeles and opened an office here in connection with your Eastern company, had you had any contacts with Jack Lane during that period?

A. I recall that I used to see him occasionally, sometimes he would be in the East, or I would be in the West, and I think I would see him at no particular or regular intervals but I imagine that I did see him about every six months or maybe once a year, something like that.

(Testimony of Carl B. Dahlberg.)

Q. And where would those visits occur, in the East or here or where?

A. I can recall at least one time when I saw him in the East and one time when I saw him out here when I happened to be in Los Angeles.

Q. Mr. Dahlberg, while you were here in 1943, I will ask you if you saw an advertisement in the local papers, one is dated I believe December 28, 1943, and one is dated December 24, 1943, in which a real estate liquidation sale was being advertised in the name and under the phone number of Jack Lane, his phone number was given in the advertisement?

A. Yes, I recall seeing such an ad. I do not recall [229] whether I saw one or the other of the ads or the date on which you just mentioned that there was some advertisement that I saw in the latter part of December.

Mr. Baird: May we have these marked for identification?

The Clerk: Petitioners' Exhibits 9 and 10 marked for identification.

(The documents above referred to were marked for identification as Petitioners' Exhibits Nos. 9 and 10.)

Mr. Maiden: I have no objection.

The Court: Exhibits 9 and 10 received.

(The documents heretofore marked for identification as Petitioners' Exhibits Nos. 9 and 10 were received in evidence.)

(Testimony of Carl B. Dahlberg.)

Q. (By Mr. Baird): Mr. Dahlberg, will you look at these advertisements that appeared in the papers which have been identified as Exhibits, well, the first one Exhibit 9; it appeared in the Herald Express on December 24, 1943, and I will ask you if you saw this advertisement or one similar to that?

A. Well, I saw an advertisement similar to that. I do not recall that it was the exact ad.

Q. And then showing you Petitioners' Exhibit No. 10 which is an advertisement in the Los Angeles Examiner as of December 26, 1943, I will ask you if you saw an advertisement [230] similar to that?

A. Well, the ad that I saw was similiar to both of these because they are practically the same except for the size of the tract.

Q. At any rate, we will offer these, or they have been offered in evidence and I understand that you did see them? A. That is right.

Q. The ad simply reads: "Real estate liquidation sale" and then it goes on to describe the parcels.

The Court: It is not necessary to put the wording of the ad in evidence.

Q. (By Mr. Baird): Mr. Dahlberg, while you cannot identify specifically those two ads, I will ask you to state whether or not you did in the latter part of 1943 see an advertisement in the paper by Jack Lane advertising for sale lots in the Palos Verdes Estates? A. Yes.

(Testimony of Carl B. Dahlberg.)

Q. What did you do, if anything, after you noticed this advertising?

A. I telephoned Mr. Lane and suggested that we get together to talk about the proposition.

Q. And did you get together to talk about it?

A. Yes. As I recall, we had lunch together within a day or so or just a few days after I had seen the ad and [231] talked to him on the telephone.

Q. Was there anyone present besides you and Mr. Lane?

A. I do not believe there was at our first meeting.

Q. And what was the purpose of your calling Mr. Lane?

A. I wanted to see what he had in mind in the way of price and what the story was on these lots that he was offering for sale.

Q. Why were you interested in these lots?

A. Well, I was in the building business and was interested in seeing if this was the kind of a proposition that I could use this property to build houses on.

Q. And did you meet with him on more than one occasion in connection with that matter?

A. Yes, we went down to look at the property several times, as I recall it, several times as a matter of fact and a couple of days.

Q. I will ask you to state whether or not anyone went with you on any of those trips that you took to Palos Verdes to look at the property?

(Testimony of Carl B. Dahlberg.)

A. Well, on one trip, I remember my wife was along, I think it was on a week end, and she went along for the ride. On at least two trips, the man, our architect for my company was along with us.

Q. And what conclusion, if any, did you come to with reference to these lots? [232]

A. Well, we concluded that at roughly $40 a lot, that Mr. Lane was asking, that it was a very good buy and we felt that with the lifting of restrictions that we could build houses down there and make a substantial profit after having bought the property at that price.

Q. When you say "restrictions," are you referring to war-time restrictions imposed by the government or are you referring to tax restrictions?

A. I am referring to war-time restrictions.

Q. Did you make some investigation to determine whether or not you could have met the tract restrictions in the Palos Verdes area?

A. Yes, we felt that we could.

Q. Do you know what some of those restrictions were?

A. Well, as I recall, there was, at that time, a $6,000 minimum restriction on at least a good portion of the lots. I think there was some restriction as to the type of roof that went on the houses and I seem to recall that it had to be either tile or something of that kind, but I did not think that it would prevent or present any particular problem to us.

Q. You did not think that it would present any particular problem to you? A. No.

(Testimony of Carl B. Dahlberg.)

Q. What arrangements did you make with Palos Verdes [233] Estates, or rather with reference to your purchase of lots, how many did you purchase?

A. I believe that ultimately I purchased about 450 lots, I think it was 451 to be exact.

Q. At what price per lot?

A. Well, the purchase price was $16,000 and that figures out at about $40 a lot.

Q. And under the arrangement were you to pay any taxes, any outstanding taxes that were against the lots?

A. Yes, there were some taxes of about $10,000 outstanding against those particular lots which I was to pay.

Q. Now, Mr. Dahlberg, you did not make any down payment at that time, did you?

A. No, I gave Palos Verdes Estates, Inc., my note.

Q. For what amount?

A. $18,000, I believe it was.

Q. Now, after you had these lots for some little time, will you state whether or not it was necessary for some additional expenditures to be made in the nature of either taxes or improvements or assessments of some kind?

A. Yes, the taxes that these lots were subject to came to, in some two or three months after the original sale and I at that time was not in a position to pay the taxes and I borrowed the money from Palos Verdes to make that payment and gave them my note for that. [234]

(Testimony of Carl B. Dahlberg.)

Q. And that amounted to approximately how much?

A. I believe that the figure was $9,800.

Q. Now, after this real estate transaction was closed in 1943, in the latter part of 1943—pardon me—I will withdraw that.

Mr. Dahlberg, I show you what purports to be the corporate grant deed from Palos Verdes Estates, Inc., to Carl B. Dahlberg, a married man as his separate property dated December 30, 1933, and executed by Palos Verdes Estates, Inc., and I will ask you if that is the deed to the property which you acquired at that time?

A. Yes, I think it is.

Q. And, Mr. Dahlberg, directing your attention to the record, to the record stamps as it is indicated on the back of the deed, it was recorded with the County Recorder, the Clerk of Los Angeles County, on December 31, 1943, is that correct?

A. That is right.

Q. And I notice that there is attached to this original deed a quitclaim deed from Mary Jane Dahlberg to Carl B. Dahlberg to this same property bearing the same date and recorded at the same time, and will you explain how you received that quitclaim deed?

A. Well, I did not want my wife to be bothered with having to find a lot of papers in connection with whatever we [235] might ultimately do with this property and I figured that it would be simpler

(Testimony of Carl B. Dahlberg.)

to get her to sign a quitclaim deed and have it over with at that time.

Mr. Baird: We offer these in evidence as Petitioners' Exhibit next in order.

Mr. Sullivan: We have no objection, but I think that we have no copy, and may we have a copy later. Of course there is no hurry.

Mr. Baird: We shall furnish the required copies.

The Court: Exhibit No. 11 is received in evidence.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 11 and received in evidence.)

Mr. Baird: And may the record show that Petitioners' Exhibit No. 11 consists of two deeds, one from Palos Verdes Estates, Inc., to Carl B. Dahlberg and the other a quitclaim deed from Mary Dahlberg to Carl B. Dahlberg?

Q. (By Mr. Baird): Mr. Dahlberg, in January of 1944, were you in the city of and in the County of Los Angeles?

A. No, I was en route to Portland, Oregon, on January 1st. As a matter of fact, I was en route to there on New Year's Eve and I arrived in Portland, Oregon, on the 1st.

Q. What was the occasion of your going to Portland, Oregon?

A. Well, I was going up there in connection with some [236] business with the contract that we

(Testimony of Carl B. Dahlberg.)

had with Johnson Lumber Company in connection with the hospitals that we had been involved with together.

Q. Do you know how long you remained there or when you returned to Los Angeles?

A. I recall, I believe, that I went to Portland, Oregon, I went to, well, I believe that I went on to Washington and Baltimore and it is possible that it was a month or so before I returned to Los Angeles.

Q. Mr. Dahlberg, can you tell us how you were able to acquire these lots at such a reasonable price or at such a cheap price of about $40 a lot, I think you said?

A. Well, the building restrictions that were on that property due to the shortage of materials at that time probably had the most to do with it. I think that Mr. Lane felt that I possibly could get the restrictions either taken off or the restrictions relaxed to the point where I could build houses on the property.

Mr. Baird: That is all. Thank you, Mr. Dahlberg.

Cross-Examination

By Mr. Sullivan:

Q. Mr. Dahlberg, what was the date of your birth? A. September 23, 1913.

Q. And was the nature of your employment for Mr. Lane, [237] I believe your first employment

(Testimony of Carl B. Dahlberg.)

back in 1932 and 1935, what kind of work did you do for Mr. Lane then?

A. Well, that was the first job that I had after I got out of high school and it was practically an office boy; I guess it was an office boy's job.

Q. Then was your employment with Celotex next after that?

A. There was a period of a year or so during which I went to UCLA and then the Celotex employment was next about then.

Q. About when did you start to work for the Celotex Corporation?

A. About the end of 1936 or the early part of 1937, as I recall.

Q. And until about January of 1942 you worked for them; is that correct, sir? A. Yes.

Q. And will you describe just briefly your work for the Celotex Corporation?

A. I started out with them as a junior salesman which meant going out with the senior salesmen for a territory and for a certain period and learning the products and getting to know the accounts that would be involved and that would be the lumber dealers and the building material dealers and who handled our materials, and after a couple of years at that I [238] was given some specialty products to handle for the corporation in the West, that is in the West Coast Division, and ultimately I was in charge of the sale of roofing and asphalt products for the company on the West Coast.

(Testimony of Carl B. Dahlberg.)

Q. And the Celotex Company was just a manufacturer or seller of building materials?

A. Well, they made a wide range of building materials. And about in 1941 they developed a product called Cenesto Board. That was the product that became the basis of this prefabricated housing system that we utilized after that in these other companies.

Q. And the Drycemble Housing Company, was that business confined to manufacturing and selling building materials?

A. No, it was not. Our business was the sale of prefabricated houses as such.

Q. The entire house, the material for the entire prefabricated house, is that what you mean?

A. Yes, that is correct.

Q. And did that company contract to do any assembling or installing on the lots or did they just sell the materials?

A. Well, in some cases, we assembled on the lots and in some cases we sold what we called the knock-down units.

The Court: And how far do you ship, or what size units do you ship of this prefabricated material?

The Witness: You mean, your Honor, the size of the [239] house or the size of the panels that go to make up the house?

The Court: The panels.

The Witness: In the Pierce Foundation type of construction by which we are, or about which we

(Testimony of Carl B. Dahlberg.)

are talking about now, the largest units would be the wall panels which were in some cases four feet wide by twelve feet long and I believe that that would be the largest individual unit.

The Court: And how about the roof?

The Witness: The roof units were about 20 inches wide and I believe they were 12 feet long, I believe that was the longest roofing, I believe that that size was the largest and that was an insulated shingle roof.

The Court: Proceed.

Q. (By Mr. Sullivan): You mentioned that the Drycemble prefabrication work which you named that there were a number of locations around the country where they conducted war housing projects, that were so-called war housing projects.

Can you tell me whether those were all war housing projects or whether any of them were unconnected with war housing?

A. They were all war housing. As a matter of fact, during that period, as I recall, that was the only thing that you could build. You had to have a priority in order to build at that time and if it was not connected with the war effort, you [240] couldn't get such a priority.

Q. And that was true, I suppose, with the non-residential sales, too, that was all the purpose to get these necessary priorities for war work?

A. Yes, sir.

Q. Do you know whether the Drycemble Company ever acquired any real estate tracts or groups

(Testimony of Carl B. Dahlberg.)

of lots for the purpose of building on them the prefabricated houses on property acquired by the company?

A. To my recollection, they did not.

Q. Just a little matter of selling and contracting their materials and work, if they did contract for the work, it was always for the purpose of some other owner of that tract?

A. If you mean did he build houses under FHA for our own account, we did not. I was quite anxious to get into that and I was familiar with some of the builders here on the West Coast. For instance, I had known Paul Truesdale, I had gone to college with him, and when I came out to open this Western office, that was one of the things that I was interested in doing, and the people in the East were not particularly interested in that and that was one of the reasons that caused the split between the Eastern and the Western group.

I was convinced that there was much more money in actually acquiring land and building houses under FHA and selling them than there was in just bidding on these projects [241] which in 1942 and 1943, the early part, had been fairly profitable but they became quite competitive later on.

Q. Did the Drycemble Company make any sales for houses to be built on any beach residential subdivisions similar to Palos Verdes or like the Hillside Homes on the Beach?

A. This system of construction has been used on the beach and there are quite a number of houses at

(Testimony of Carl B. Dahlberg.)

La Jolla that are constructed of this material and using this system. I believe that was done after the war restrictions were lifted, however; I do not believe that it would have been profitable to build houses at La Jolla during the war.

Q. Not during the war while the restrictions were on? A. That is right.

The Court: It is now 4:30 and we will adjourn until tomorrow morning at 9 o'clock.

(Whereupon, at 4:30 p.m., the hearing was recessed, to reconvene at 9 o'clock a.m., Thursday, June 3, 1954.) [242]

The Clerk: We will now proceed with the American Pipe and Steel Corporation case.

Mr. Sullivan: Mr. Dahlberg, will you take the stand again?

Whereupon,

CARL B. DAHLBERG

resumed as a witness for and on behalf of the Petitioners, having been previously duly sworn, was examined and testified further as follows:

Cross-Examination
(Continued)

By Mr. Sullivan:

Q. Would it take very long to give your lifetime history with regard to investments and speculations in real estate?

A. Investments and speculations in real estate?

(Testimony of Carl B. Dahlberg.)

Q. Yes.

A. No, that wouldn't take very long.

Q. Would you do that?

A. I haven't had any experience, to speak of, in speculations in real estate. I have been interested in one or two projects, including a project in Glendale, that involved 33 acres of property, which I still have an interest in.

Q. When did you acquire that?

A. We acquired that in about 1937 or '38, I believe.

Q. You and who else were in that? [246]

A. Mr. Lane, Jack Lane, Mr. Roy Dolley, Mr. Robert Archer, and myself, as I recall.

Q. What was your percentage interest in it?

A. I believe I had a fourth.

Q. Will you briefly describe the nature of that project?

The Court: What is the purpose of these questions?

Mr. Sullivan: If the Court please, to get more of a background foundation, which Mr. Baird was inquiring into, the business history of Mr. Dahlberg in connection with the matter of claim which the Petitioner makes that some way, through Mr. Dahlberg, there was some sort of a business purpose on the part of American Pipe and Steel in the conveyance of some of the lots in Palos Verdes to Mr. Dahlberg.

The Court: I don't see the purpose of going into

(Testimony of Carl B. Dahlberg.)

such detail. It seems to me we are taking a lot of time for preliminary matters.

Mr. Sullivan: I will try to make it as short as possible, your Honor.

The Witness: I might say that Mr. Robinson, who was a partner in Westco Construction Company, with whom I was associated, as a joint venture from the period 1940, till early in '44, until '45, had extensive experience in FHA housing and had built quite a number of housing projects, and had accumulated quite a fortune in so doing. Also, Mr. Robert [247] Johnson of the C. D. Johnson Lumber Company, with whom I was associated in joint ventures in 1943, likewise, has had extensive experience in FHA housing, and has built quite a few thousand units, also with very great success.

Q. (By Mr. Sullivan): This Glendale tract, is that the only one prior to 1943 in which you had an actual interest?

A. You are speaking of real estate only and not housing construction, I take it?

Q. Yes. A. I believe that it was, yes.

Q. Then these ads in the paper of Jack Lane's were the start of your interest in acquiring lots in the nature of those of Palos Verdes?

A. No, it wasn't the start of my interest. When Paul Truesdale started building houses out in Fontana for the Kaiser Steel Plant, he asked me to come in with him at that time, but I was located in Baltimore and felt that I couldn't leave Baltimore operations at that time.

(Testimony of Carl B. Dahlberg.)

But Truesdale was very successful in that project and in later projects, and, having watched his progress, I became very much interested in that phase of the business and felt that it would be a profitable part of the business.

Q. But when did it first occur to you to try to buy some lots in Palos Verdes, at the time you read the ad of Mr. [248] Lane that you refer to?

A. Yes.

Q. That was somewhere about the 24th or 26th of December, 1943? A. Approximately.

Q. You said the deed was recorded December 31, 1943. Were you or the Palos Verdes Estates in such a rush to get the deed recorded, do you recall?

A. I recall that I was leaving town on the night of the 31st, and from my standpoint the deal had to be concluded before I left.

Q. That would have no bearing on the matter of recording the deed, would it?

A. I don't think—I don't know that it would, no, not from my standpoint, although I don't know of any reason to hold up recording of a deed after the deal has been closed.

Q. Can you tell whether it was the Palos Verdes that caused the deed to be recorded December 31st, or do you know about that?

A. Well, I think it was my attorney who caused it to be recorded, and my attorney was also the attorney for American Pipe. That was Mr. Dolley, who has been mentioned here before. As a matter of fact, Mr. Dolley was my mother's attorney, and he

(Testimony of Carl B. Dahlberg.)

was the man who introduced me to Mr. Lane in 1932, when I first went to work for Mr. Lane. [249]

Q. You were leaving New Year's Eve for a business trip for several weeks, as far as you were concerned, weren't you? A. Yes.

Q. Then these lots were conveyed to you by that deed and for which you gave a promissory note for $18,000, I believe, as the entire consideration. Was the reason for putting no cash down on this transaction because you were unable to, financially unable to put down any cash?

A. I was not able to personally at that time, no.

Q. Will you describe what you did with these lots after December 31, 1943?

A. Yes. I showed the lots to a number of people. We designed houses and submitted them to the FHA for approval as to the type of construction, and to the County Building Code Department and so forth, and did subsequently get approval of our type of construction. I showed the lots to a number of people, including my uncle, who had quite good connections in Washington at that time, with the hope that something might be done to get the restrictions lifted. I believe he did see various people in FHA and the other agencies back there during that period. The restrictions never were lifted, however, and we were unable to build on the lots during the period that I had them.

Q. That is, priority restrictions in regard to use of materials in certain areas; that is the sort of re-

(Testimony of Carl B. Dahlberg.)

strictions [250] that were against it at the time and never were lifted?

A. Well, it was even more than that. It was actually against the law to build a house except in certain areas, whether you could get the materials or not.

Q. Did you convey all of these lots to Mr. Jack Lane in 1948? A. Yes, sir.

Q. Did you ever pay anything, any cash of your own in connection with these lots?

A. Pay to Palos Verdes, you mean?

Q. In any manner.

A. Well, I made no cash payments to Palos Verdes. I was put to some expense in connection with the development of plans and the securing of FHA approvals on the type of construction and so forth.

Q. Travel expense and other expenses?

A. Items of that nature, yes, sir.

Q. The tax liens that were on the lots at the time, on which I believe the time limit was six months' time limit, expired early in 1944. Can you tell whether any were redeemed or can you tell with regard to about what proportion of them were redeemed and what proportion were not?

Mr. Baird: Would you make that a little more explicit? Are you talking about the lots that he had or the lots generally? [251]

Mr. Sullivan: The lots conveyed in the deed to you.

(Testimony of Carl B. Dahlberg.)

The Witness: As I recall, they were all or at least a good portion of them were redeemed.

Q. (By Mr. Sullivan): You didn't personally keep track of that?

A. Yes, sir, I did. But I don't remember now, after ten or twelve years.

Q. You don't remember what proportion were redeemed and what were not?

A. I believe it was a major proportion, if not all, is my best recollection.

Q. Do you know where that money came from to redeem the ones that were redeemed?

A. Yes, sir, I borrowed that from Palos Verdes Estates and gave them my note.

Mr. Sullivan: No further questions.

The Court: Any other questions?

Mr. Baird: Yes, sir, if your Honor please, if I may.

Redirect Examination

By Mr. Baird:

Q. Mr. Dahlberg, I think that I neglected, when you were on the stand on direct—and with the Court's permission and counsel's indulgence, I am going to ask you if you will look at these folders and prospectus and so forth that I hand [252] you and ask you if you can pick out from that group of folders any that would indicate in a pictorial way or a graphic way the type of construction in which your company was engaged, that is, your Dryeemble Houses, Inc., and your Dryeemble Houses Corporation?

(Testimony of Carl B. Dahlberg.)

A. Well, this folder indicates a lot of the construction details.

Q. Just a moment.

Mr. Baird: May we have this marked so we will know about what we are talking about?

The Clerk: Petitioners' Exhibit 12 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 12.)

Mr. Baird: Petitioners' Exhibit 13 for identification.

The Clerk: Petitioners' Exhibit 13 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 13.)

Mr. Baird: Petitioners' Exhibit 14 for identification.

The Clerk: Petitioners' Exhibit 14 for identification. [253]

(The document above referred to was marked for identification as Petitioners' Exhibit No. 14.)

The Clerk: Petitioners' Exhibit 15 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 15.)

Q. (By Mr. Baird): Showing you Petitioners'

(Testimony of Carl B. Dahlberg.)

Exhibit 12 for identification, I will ask you just to describe briefly what that is.

A. Well, this is a set of construction details which were developed in connection with the use of Cemesto Board for either wood, aluminum, or steel construction.

Q. And will you tell us, please, what Cemesto Board is? Is there any picture or diagram of Cemesto Board in that booklet?

A. I believe the first page of this booklet gives a complete description of the product. It is a single-wall panel material which makes up a complete wall section.

The Court: Is it laminated?

The Witness: Yes, sir.

The Court: And what is the basic material?

The Witness: The core is an insulation material which happens to be Celotex, in this case. And the outside surfaces are asbestos and cement board, which provide the wearing surfaces of the [254] panel.

The Court: No wood in it?

The Witness: No, sir. The core of Celotex is made from the residue of sugar cane, after sugar has been extracted. It is made from the sugar cane fibers.

Q. (By Mr. Baird): This proposed exhibit, Petitioners' Exhibit 12 for identification, is that a prospectus or an explanation of the type of structure which was in effect and which was used by you or your companies during the period about which we have just been talking, 1943?

(Testimony of Carl B. Dahlberg.)

A. Yes. As I believe I testified, the Drycemble Company had the exclusive rights to the sale of Cemesto Board throughout the United States. And many of the construction details that are shown here were developed by us in connection with the prefabricated houses that we sold during that period.

Mr. Baird: We offer this in evidence, if your Honor please.

Mr. Sullivan: No objection.

The Court: Twelve is received.

(The document heretofore marked for identification as Petitioners' Exhibit No. 12 was received in evidence.)

Q. (By Mr. Baird): With reference to Petitioners' Exhibit 13 for identification, I will ask you to state briefly what that is?

A. This is a piece of descriptive literature put out by [255] the Celotex Corporation, illustrating the various types of structures, residences, as well as commercial buildings, that have been manufactured out of Cemesto Board.

Q. Will you state whether or not that piece of literature was in use during the years 1942 and '43 and prior thereto?

A. I don't believe that it was. Some of the houses that are shown here were constructed during that period and prior to that time.

Q. Well, is that descriptive of the type of ma-

(Testimony of Carl B. Dahlberg.)

terial and the type of construction that was in use during that period?

A. Yes, it is. This was put out for the purpose of showing what had been done with the material and this type of construction.

Q. I will ask you whether or not on that exhibit there is any indication that houses of more than one story were used, and I direct your attention to the upper left-hand corner?

A. Yes. There are houses of more than one story shown here. As a matter of fact, we constructed quite a number of units ourselves that were two stories.

Q. That is your Drycemblé Corporation?

A. Yes, sir.

Mr. Baird: May I offer this in evidence, please, [256] No. 13?

Mr. Sullivan: No objection.

The Court: It will be received.

(The document heretofore marked for identification as Petitioners' Exhibit No. 13 was received in evidence.)

Q. (By Mr. Baird): Now, showing you Exhibit 14 for identification, I will ask you to identify that.

A. This is a descriptive piece of literature put out by the Memmler Technical Foundation, describing the type of construction which utilizes steel framing and Cemesto Board. I am quite familiar with this type of construction, because I worked with the Republic Steel Company back in about

(Testimony of Carl B. Dahlberg.)

1942 and '43, developing some of these basic principles, and I worked with Mr. Memmler in the beginning when he developed this particular system of construction.

Q. Now, at the time you were working with the Republic Steel Corporation in 1942 and '43, were you employed by Republic Steel Company?

A. No, my interest was in the Cemesto Board Drycemble end of it, and Republic was interested in having a market for steel and prefabricated houses, and their interest was to try and combine steel framing with Cemesto Board, rather than wood framing.

Mr. Baird: We offer in evidence that document. [257]

Mr. Sullivan: No objection.

The Court: It will be received.

(The document heretofore marked for identification as Petitioners' Exhibit No. 14 was received in evidence.)

Q. (By Mr. Baird): I show you Petitioners' Exhibit 15 for identification and ask you to tell us what that is.

A. This is also a pamphlet put out by the Memmler Technical Foundation and also describing steel and Cemesto Board construction.

Mr. Baird: We offer that, if the Court please.

Mr. Sullivan: No objection.

The Court: Exhibit 15 in evidence.

(Testimony of Carl B. Dahlberg.)

(The document heretofore marked for identification as Petitioners' Exhibit No. 15 was received in evidence.)

Q. (By Mr. Baird): Mr. Dahlberg, you testified that after you had had your conference with Mr. Lane, I believe you said at the Jonathan Club, that you made two or three trips to the Palos Verdes area with your architect. Will you tell us, please, what if anything, you were advised by him, what if any, conclusion you reached as to feasibility of using this type of construction in the Palos Verdes area? [258]

A. Well, he felt that this type of construction lent itself very well to this property which was view property, and as will be seen from some of the folders that have been placed in evidence here, our type of construction lent itself to wide expansive glass, picture windows, and what is more or less known as modern design. And that is the type of house that is generally constructed on hillside or hilltop view property.

Mr. Baird: I don't know whether your Honor would be interested in taking the time to look briefly at those exhibits at this time or not. If so, we would be happy to have the Court do it.

Q. (By Mr. Baird): With reference to the Drycembles Houses, Incorporated, as I recall, you have stated that company, Eastern company, did not build houses on land owned by it, and that it was your desire to get into that type of operation,

(Testimony of Carl B. Dahlberg.)

that is, where you would acquire the land and then do the construction.

Will you elaborate on that and explain what your reason for that conclusion was?

A. Well, my reason was that I felt it was more profitable. By 1943, government bidding had become very competitive on Federal public housing company projects or projects direct for the Army or Navy, and there was very little profit in some of the later projects that we did, as against substantial [259] profits that we had on some of the earlier projects.

I was aware of some of the building projects that had been constructed out here by Truesdale and Hiett Dane and others, all of which were extremely profitable. And I was interested in getting into that end of the business if at all possible.

Q. Well, was it your opinion and conclusion that the type of construction, as exhibited in the exhibits which have been offered this morning, was suitable for private use and for projects other than war housing projects?

A. Very much so. And it is now being so used very extensively.

Q. Do you know whether or not Republic Steel or any of the steel companies have been promoting that type of construction in connection with their steel products for framing and other items that go into house construction?

A. Well, I know that United States Steel Corporation has. They have spent quite a few million

(Testimony of Carl B. Dahlberg.)

dollars in that field and have acquired one of the largest prefabricators in the country, which formerly was known as Gunnison Homes. I believe it is called U. S. Steel Homes or some such name now. I also know that Columbia Steel and one or two others also are engaged in manufacturing housing framing and rough trusses and floor joists and items of that kind.

Q. Mr. Dahlberg, going back to your connection with [260] Celotex, who was the principal owner of Celotex Company at the time?

A. That was my uncle, Mr. Bror Dahlberg. He was president and chairman of the board.

The Court: How thick is this material?

The Witness: It varies for outside walls, depending on the temperature conditions, the location that the house is being built in, but outside walls are usually two inches thick, and they may be as much as three inches thick. For some of the construction out here in a milder climate, we use a one-and-a-half inch thick panel for the exterior walls.

The Court: Is the bulk of that thickness in the Celotex?

The Witness: Yes. One inch of this material in thickness is equivalent in insulation value to fourteen inches of brick or concrete wall.

Q. (By Mr. Baird): Mr. Dahlberg, will you state whether or not your father and his brother had anything to do with the development of Celotex?

(Testimony of Carl B. Dahlberg.)

A. Yes, they organized the Celotex Corporation.

Q. Well, I am asking not about the organizing of the corporation, but as to whether or not they had anything to do with the developing of the process or the inventing of it, so to speak? [261]

A. Well, yes. They did have. Before starting Celotex, they had been employed by a lumber company in Minnesota that had made a somewhat similar product out of waste from sawmills, using wood fibers. They discovered that sugar cane fiber was much longer, stronger, and tougher, and developed the process whereby this material, Celotex, could be made from sugar cane fibers after the sugar had been extracted from the cane.

Q. Mr. Dahlberg, will you state whether or not there was any particular reason why you desired to have the title to the real estate which you acquired in Palos Verdes in your name prior to your departure for Seattle or Portland, and back to Baltimore, or wherever it was you went?

A. Well, I was anxious to get started on work in connection with the removal of restrictions, which I thought at that time might be relatively easy. I found out later it was extremely difficult, and in fact we were not successful. I didn't want to do a lot of work or ask my uncle or other friends of mine to do work along that line for me unless I knew I had the property, and could do something with it if we were successful in our efforts to get the restrictions lifted.

(Testimony of Carl B. Dahlberg.)

Q. Now, at or about this time, you were in a joint venture known as Westco, were you not?

A. Shortly—I was in the negotiation stage at this time with Westco Construction Company. In the early part of the [262] year, I think about March, we actually signed up.

Q. Of which year?

A. Of 1944, we signed up a joint venture between Drycemble and Westco.

Q. Now, which Drycemble?

A. This was Drycemble Houses, Inc.

Q. Drycemble Houses, Inc. That was the Eastern corporation?

A. Yes. That first joint venture was superseded about a year later, as I recall, by a joint venture between the Western company and Westco Construction Company.

Q. Who were the people financially interested in Westco?

A. Mr. W. B. Robinson, Sr., was the primary partner in that company. In fact, the other partner was his wife and son. So for all practical purposes Mr. Robinson was Westco Construction Company.

Q. Will you state whether or not you had any negotiations with the Westco Construction Company or Mr. Robinson relative to the development of this Palos Verdes property which you acquired in your name?

A. Well, I showed the property to Mr. Robinson on a number of occasions, and he was willing to finance a building project down there when, as, and

(Testimony of Carl B. Dahlberg.)

if we could get clearance as far as priorities were concerned. And he did finance many other projects during the next several years before he died, [263] for us.

Q. I am not quite sure whether I asked you yesterday, and I will ask you again whether you have had any experience in building under the FHA requirements, and experience in negotiating FHA loans?

A. No. I have had experience with FHA under —yes, I have had experience with FHA in the General Panel Corporation. In that company, we negotiated a loan from the RFC for about two million dollars, in 1945.

Q. Were you an officer of that company?

A. Yes, I was president.

Q. That was in 1945? A. Yes, sir.

Q. Now, I believe Mr. Sullivan asked you about some transaction that took place with reference to these lots in Palos Verdes in 1948. I will ask you whether or not on or about the 28th day of January, 1948, if you entered into some sort of an agreement of sale with Mr. Jack Lane? A. Yes, I did.

Mr. Baird: May we have this marked for identification?

The Clerk: Petitioners' Exhibit 16 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 16.) [264]

(Testimony of Carl B. Dahlberg.)

Q. (By Mr. Baird): Mr. Dahlberg, I show you Petitioners' Exhibit 16 for identification and ask you if you can identify that?

A. Yes, that is a copy of the agreement.

Q. In other words, this is a copy of an agreement entered into between you and Mr. Jack Lane on the 28th day of January, 1948, in respect to certain lots acquired by you from Palos Verdes Estates, Inc., in December of 1943? A. Right.

Q. Now, do you have your original of that agreement, Mr. Dahlberg?

A. No, I don't have at this time.

Q. Have you made any search for it, or will you give whatever explanation there is as to why you do not have it?

A. Well, the explanation is that I have lost that, along with a number of other files that were in a safe which was left by me in an office in Los Angeles when I gave up renting the office, and the tenants, after some period of time, needed the space and opened the safe and destroyed the contents, and I have been unable to locate that material since.

Q. When you say a "safe," what are we talking about? That seems a little bit unusual, that you would have documents in a safe that some subsequent tenant would open. Can you tell us about that?

A. Well, it was a cabinet with a lock on it. [265]

Q. You mean a steel file cabinet?

A. Yes, sir. And it had the minute book of the Drycemble Company and——

(Testimony of Carl B. Dahlberg.)

Mr. Sullivan: Pardon me. I might be able to save a little time. If we may have a copy to check that, with my understanding of the document, Respondent will accept it as a true copy of the original.

Mr. Baird: Very well. I may say we may find the original in the process of searching for that, too. We offer that.

Mr. Maiden: That would be recorded down here, would it not?

Mr. Baird: That I cannot answer.

The Witness: I believe it was recorded.

Q. (By Mr. Baird): Was this agreement recorded? A. I believe so.

Mr. Baird: We offer this in evidence, if your Honor please.

Mr. Sullivan: No objection.

(The document heretofore marked for identification as Petitioners' Exhibit No. 16 was received in evidence.)

Mr. Baird: In order that the Court may follow the continuity of what is going on here, I think that it would be [266] necessary for me to read this, and it is, fortunately, only two and half pages long.

The Court: If you feel it is absolutely necessary to do so, but I don't want to take the time.

Mr. Baird: I think it is necessary to read at least a portion of it.

"In consideration of ten dollars, the receipt of which is hereby acknowledged, Carl B. Dahlberg

(Testimony of Carl B. Dahlberg.)

agrees to sell, and Jack Lane agrees to purchase, all of Dahlberg's right, title and interest in and to the real property listed in the above-mentioned grant deed.

"It is agreed that the contingent price of said property shall be $37,000, providing Lane is successful in selling the property for some price in excess of this figure. In the event that Lane is unsuccessful in selling the property for a price in excess of $37,000, Lane's purchase price shall be reduced to the aggregate amount received by Lane, when, as and if all of the property is sold.

"It is further agreed that the purchase price to be paid to Jack Lane shall be paid in the following manner:

"As, if and when any of the property is sold, the proceeds therefrom shall be applied as set forth hereunder:

"First, to the payment of all delinquent taxes, penalties, assessments, and other accruals," and so forth. [267]

"Second, to the payment of two notes executed by Dahlberg in favor of Palos Verdes Estates, Inc., one in the principal amount of $18,000, dated December 28, 1943, and the other in the principal amount of $9,884.83, dated April 7, 1944; third, to the payment of accrued interest on the above-mentioned notes; fourth, to the remainder of said purchase price, to be paid to Dahlberg or his assignee.

"Lane does not guarantee to pay $37,000 for the property unless it is sold by him for an amount in

(Testimony of Carl B. Dahlberg.)

excess of said figure, and, further, Lane does not agree to pay any price less than the $37,000 which is in excess of the net price which Lane receives from the sale of said property, that is to say, if the net sale price received by Lane is less than $37,000, the price payable under this agreement shall not exceed the amount of the net sale price so received by Lane.

"Dahlberg and Lane agree that Dahlberg's right, title and interest in and to many of the lots included in the property hereby sold to Lane have passed to the State of California, but Lane agrees to use his best efforts to sell the remaining property at approximately the same prices for which Lane sells other comparable property owned by him in the immediate area.

"It is mutually understood that Carl B. Dahlberg, [268] having executed a grant deed as of this date, and transferred the title to said property to Jack Lane, retains no interest or ownership of any kind in or to the said real estate, but has merely an obligation due from Lane, the amount of which is contingent upon the result of resales of the property, or parts thereof, by Lane. No limit is placed upon the time within which resales may be made by Lane."

Q. (By Mr. Baird): In other words, am I correct in my conclusion that you obtained a contingent interest in these lots under that agreement?

A. Yes, sir.

Q. That is contingent in the sense that Mr. Lane

(Testimony of Carl B. Dahlberg.)

would be obligated to pay you some amount if he was successful in selling at a favorable price?

A. That's right.

Q. Mr. Dahlberg, why was it necessary to sell these lots back to Mr. Lane in 1948?

A. Well, there were additional taxes coming due at that time, and I was involved in a lot of complications with the General Panel Corporation at that time and didn't feel that I could put up the money for the taxes.

Mr. Baird: That is all, your Honor.

Mr. Sullivan: Just a few questions, your Honor. [269] I want to ask Mr. Baird, first, if there is a copy we can have now of the petitioners' last exhibit, the agreement.

Mr. Baird: Mr. Sullivan, Mr. Hair tells me we have some copies at the office. We don't have them here. We will furnish you with copies.

Mr. Sullivan: Thank you.

Mr. Baird: Mr. Dahlberg—before you leave the witness stand, may I have this marked for identification, this document here?

The Clerk: 17 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 17.)

Q. (By Mr. Baird): So that we may offer this later in evidence, if we conclude it is material, will you identify this if you can as to what this is?

A. These are drawings of framing details for

(Testimony of Carl B. Dahlberg.)

Cemesto construction, prepared by the Product Development Division of the Columbia Steel Corporation. We had done considerable work with Columbia Steel Corporation in connection with the development of steel framing for use with Cemesto Board, and these are drawings of some of the construction details that were developed in that connection.

Q. And is that a document that you have had in your custody and possession, as a result of your contact with that [270] part of your work, with the Drycemble Corporation? A. Yes.

Q. May I ask, did you ever use any of the steel framing of the steel company referred to here?

A. No, I don't believe that I ever did.

Mr. Baird: That is all.

Recross-Examination

By Mr. Sullivan:

Q. Can you describe with respect to the entire Palos Verdes tract whether the lots that you acquired were all together or scattered or partly scattered?

A. As I recall, they were in two blocks, one block consisting of, I believe it was 303 lots, and the other block consisting of 148 lots. One of the blocks was down near the ocean and the other block was up on the hill.

Q. Those were not all contiguous though, those two blocks? A. Very much so.

(Testimony of Carl B. Dahlberg.)

Q. You think they were very nearly contiguous?

A. They were all very closely grouped, yes, sir.

Q. There were lots in between, were there not?

A. Occasionally, there was a lot in between, but my recollection was that they were practically adjoining.

Q. In general, were these the best of the lots that Palos Verdes then owned? [271]

A. Not necessarily, no. I don't think there was much distinction between the lots Palos Verdes continued to own and the lots that I had. I think the main difference was that these lots were more closely grouped than the lots Palos Verdes retained, and because of that reason they lent themselves more to a housing project than to building by individuals.

Q. Will you describe the scope of your investigation of lots in Palos Verdes at that time? Did you really look them all over?

A. I didn't look them all over. I was down at the property a number of times. I can't say that I looked at every individual lot, no.

Q. Did you put any improvements on the lots conveyed to you during the time you held title?

A. No, I didn't, and I believe that also was against priority regulations, to put improvements of any kind unless you had authority to go ahead with the house construction.

Q. On 1948, were there any priority regulations or other regulations still in effect?

A. I believe that the veterans' housing program

(Testimony of Carl B. Dahlberg.)

was still in effect, and as I recall there still were priority restrictions of various kinds.

Q. Do you know the extent that that would affect Palos Verdes tracts? [272]

A. At that time, I believe the restrictions were all on the use of materials. In other words, your ability to get materials was largely dependent upon having a priority. The restrictions were lifted at that time as to the distance that a project had to be from a war plant. I believe the restrictions were lifted as to the size of house you could build; I believe they had been lifted as to the total price you could charge for a house. But there were still restrictions, as I recall, as far as ability to get materials was concerned.

Q. It is your recollection that continued as late as 1948? A. I believe that it did, yes.

Mr. Sullivan: No further questions.

Further Redirect Examination

By Mr. Baird:

Q. Are you familiar with the rent restrictions, as to whether or not they continued on through 1948 and even later?

A. Yes, rent restrictions continued until about 1950, as I recall.

Mr. Baird: If the Court please, I think that some time or other in this proceeding it will be necessary for us to get a map, and perhaps more than one map, in. I am going to offer this map of the Palos Verdes Estates at this time.

(Testimony of Carl B. Danlberg.)

Does counsel have any objection?

Mr. Sullivan: May we have a copy of the same one? [273]

Mr. Maiden: When was that map made? Is that the map of the property as it was then, or is that some subsequent map?

Mr. Baird: This is dated August, 1924.

Mr. Sullivan: If it is explicitly understood this is a 1924 map, there is no objection.

The Court: You are offering that?

Mr. Baird: Yes, we are offering it, if your Honor please.

The Court: Exhibit 18.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 18 and received in evidence.)

Mr. Baird: Do you want to help me hold this map a moment, and I will ask the witness a question or two about it?

Q. (By Mr. Baird): Can you see the map from this point? A. Yes.

Q. Directing your attention to the area in red, where the lots are marked in red on the center of the map, I will ask you whether or not that represents a portion of the area acquired by you from Palos Verdes in December, 1943?

A. The 303 lots are shown in the center of the map, and the 148 lots are shown—checked in red in the lower left-hand corner of the map. [274]

(Testimony of Carl B. Dahlberg.)

Q. How many lots did you say were in the lower left-hand corner area?

A. I believe there were 148.

Q. And how many in the part marked out in red in the center? A. 303, I believe.

Q. I notice there are some lots marked in red at the extreme western part of the map and about the center: were those lots that you had anything to do with? A. I don't believe so, no.

Mr. Baird: That is all.

Mr. Sullivan: No questions.

Mr. Baird: That is all, Mr. Dahlberg.

The Court: You are excused.

(Witness excused.)

The Court: We will take a brief recess.

(Recess.)

The Court: You may call your next witness.

Mr. Baird: Mr. Lane, please.

Whereupon,

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FILED
OCT 30 1957
JOHN T. FEY, Clerk

United States
Court of Appeals
for the Ninth Circuit

AMERICAN PIPE & STEEL CORPORATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record
In Two Volumes

Volume II
(Pages 325 to 656)

Petition to Review a Decision of the Tax Court of the United States.

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PAUL P. O'BRIEN, CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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Petition to Review a Decision of the Tax Court of the United States.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—8-31-56

JACK LANE

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name and address [275] for the record?

The Witness: Jack Lane, 95 Tustin Road, Pasadena.

Direct Examination

By Mr. Baird:

Q. Are you a native of California?

A. I was born in Ashland, Kentucky, on April 15, 1903.

Q. You have resided in California, however, for a good many years?

A. Since 1919, December or November of 1919.

Q. You have been here continuously since that time?

A. I have resided here continuously since that time, although I have done considerable travelling.

Q. And you are now president of American Pipe and Steel?

A. That's correct, American Pipe and Steel Corporation.

Q. Now, Mr. Lane, by way of introduction, I want you to review just briefly what you have done since the time you came here in 1919, down to the time you started, first, to work in American Pipe and Steel Corporation.

A. Well, on my way out to California, in 1919, I met the president of the company, which was then called the American Steel, Pipe and Tank Company.

(Testimony of Jack Lane.)

We became friendly on the train, and so he sent me over to Alhambra to go to work, which I was there either three or four days or a week; I have forgotten how long it was, now, and I didn't care for it there. So I got other employment. And I worked at a number [276] of different places. I worked at the Santa Fe Railroad as a call boy. I worked at the General Petroleum Corporation for several years, leaving there in 1925. I had a newspaper district, and in the General Petroleum Corporation I was transferred to different departments; in fact, all the time I was there, I was in any number of different departments including the refining, the production, the accounting, and leasing, and construction.

The Court: How old are you?

The Witness: Today? I am 51.

Q. (By Mr. Baird): Mr. Lane, may I ask whether or not at one period of your life you worked as a call boy at the Santa Fe in the evening and held some position with the General Petroleum, and also operated a newspaper distribution service?

A. Yes, for a while I had the three jobs at one time, and at the same time I was singing on Sundays.

Q. Singing on Sundays?

A. Yes; I worked at the General Petroleum Corporation from—my shift was from 6 in the morning until 3 in the afternoon. I worked at the Santa Fe from 4 until 12. And then the paper distribution was, we would pick up the paper—

(Testimony of Jack Lane.)

I would go over to meet the boys who were getting ready to deliver the paper, I would meet them around 4:30, quarter to five, and spend a half hour with them; and then I'd go on to [277] General Petroleum Corporation.

Q. Where did you do this singing on Sunday?

A. Oh, at different churches and the Philharmonic Auditorium here, and different places.

Q. Did this combination of jobs get you into any difficulty with the Santa Fe?

A. The Santa Fe fired me for insubordination. I didn't show up on time one day, and, in fact, it was a couple of days in succession.

Q. In other words, you were spreading your efforts over too much territory at that time?

A. Yes.

Mr. Maiden: I don't see any possible connection.

The Court: It is interesting but it isn't important. Please keep the thoughts strictly to the issue, and get through it as soon as you can.

Mr. Baird: Very well, your Honor.

Q. (By Mr. Baird): Now, Mr. Lane, if I understood you correctly, the very first connection you had with American Pipe and Steel was the first two or three weeks after you came to California?

A. Yes; the same week as I arrived here.

Q. Then you had no contact with American Pipe and Steel until what time?

A. It was either '27 or '28, or along in there. I am [278] not certain of the date, because I was doing other work. All of the time I have been with

(Testimony of Jack Lane.)

American Pipe and Steel I have had other interests, and I have had not only one or two, but a number of different interests. And for that reason I don't recall just exactly what year it was when I started becoming active for American Pipe.

I have endeavored to look at the payroll records, but during those days they didn't keep payroll records as completely as we have during the last, say, ten or twelve, fifteen years.

Q. Has your connection with American Pipe been continuous since 1927 or '28?

A. Yes, that's correct; continuous on a part-time basis, I will say. I didn't devote my entire energies to American Pipe.

Q. I see.

A. I might explain that just a little bit: When I left the General Petroleum in March, 1925, I had completed quite a few correspondence courses in different types of, what would you say, subjects. And I hung out a shingle as business manager. And that consisted of handling leases and properties for different people.

Well, my first work along that line was with the Clearlake properties in San Francisco. They had a subdivision up by Clearlake, California, which is north of San Francisco, approximately, oh, to my best recollection, a hundred or so [279] miles, maybe it is 75; maybe it is 115. I have forgotten.

And then we were taking on different types of sales items in this company, because we were getting started. And we sold dried fruit, and then we sold for the Del Monte properties—that was down south

(Testimony of Jack Lane.)

of San Francisco on the peninsula, almost to San Jose—it is on what they call Skyline Boulevard.

Then, when I came to Los Angeles, we were selling both properties and leases, oil company leases, for different people, buying and selling those leases. So that was the period in between there. And I continued on under that name, Jack Lane and Company, until '36 or '37.

Q. Now, did you continue on with that company after you had become associated with American Pipe?

A. Oh, yes; with that company and a number of others. During the depression, I was receiver and trustee for different oil companies, and I operated quite a few oil companies at one time, at the time while I was with American Pipe, also.

Q. Did you during some period of time act as trustee in bankruptcy for any estates?

A. Oh, yes, estates and oil companies; and one of the main ones that would be of interest in this case is the Grace Bryan Hargraves, William Jennings Bryan's daughter, and Mrs. Bryan was called Mary Baird Bryan. She died first and left a part of her estate to the Bryan children, which was the two [280] sisters and a brother. And when William Jennings Bryan died, Mrs. Hargraves had married a banker in Beverly Hills; and she had just gotten a divorce and met some fast salesman down there that was selling the property adjoining Palos Verdes, which is called Hollywood Riviera, and she bought quite a few properties or lots in that area for substantial prices.

(Testimony of Jack Lane.)

Q. Now, right at this point, will you tell us, please, the size and scope of the Hollywood Riviera, approximately? A. The size of the area?

Q. Yes. I am trying to get before the Court and into the record as to whether you are talking about a few lots or whether you are talking about a rather extensive acreage.

A. It is just a guess on my part from looking at the size of the acreage. But I would say there must be five or six thousand lots involved in the project.

Q. That is in the Hollywood Riviera?

A. Hollywood Riviera Project. And it is due north of Palos Verdes on the main highway. It is adjoining Palos Verdes to the north, on the main highway and the beach.

Q. Now, in connection with that, Mrs. Grace Bryan Hargraves owned extensive interests in that area? A. That's right.

Q. Will you proceed and tell us about that?

A. I was her trustee in bankruptcy, and one of my duties under that connection was to go into those properties, [281] for the value of the properties which they had been sold for prior to this bankruptcy, which I believe was in 1931; I am not certain; it was either '31 or '32. When we liquidated——

Q. How extensive were those real estate properties that you had to liquidate at that time?

A. I think she must have bought 40 or 50 lots; I have forgotten now. I am not clear on it. I know

(Testimony of Jack Lane.)

there was quite a few; and she had spent practically all the money she had received from her husband on these lots, and it had run into a substantial sum.

Q. Now, in that connection, did you have any occasion then to familiarize yourself with the area known as the Palos Verdes Estates?

A. Yes; I was down there quite frequently in that period; and another friend of mine bought the Haggarty house at Palos Verdes, and I was told then that it was built at a cost of $250,000. I spent many evenings at his house; and in fact, I went down with him before he bought it to advise him as to what the properties had been worth in the Hollywood Riviera before he purchased that house.

Q. Who was Mr. Haggott?

A. Haggarty is the name; J. J. Haggarty owned a department store here in town. It is the J. J. Haggarty Company. I think they still have a department store here, but I am not familiar [282] with it.

Q. That is correct, one of the leading department stores of Los Angeles.

Now, that was what year or years was that?

A. I think he bought that in '34 or '35, somewhere along in there. I have completely lost the date. I can check it in the records.

Q. The exact date isn't important. I am just trying to approximate some things here. Now, during the period of your operation from 1936 and on, I will ask you, did you have any real estate broker's license during any of that period of time, and do you have one now?

(Testimony of Jack Lane.)

A. I have one now, and I have had a real estate broker's license continually since 1936.

Q. Did you at any time in your career maintain an office in a town or a subdivision known as Hawthorne?

A. Yes. In '36, I had a real estate office down there; and it is about, I'd say, four miles from Palos Verdes would be my best guess. It is just north of Torrance. That is adjoining Palos Verdes on the north, and the next little town is Hawthorne; and you couldn't tell when you leave one town and get into the next one.

Q. Would you say that was during the period of about 1937?

A. '36 or '37, or it might have overlapped into two years. I have forgotten just exactly. [283]

Q. That is sufficient for our purpose. Now, going back now to the American Pipe, what specifically were your duties there when you first went to work there? I am not referring to the very first instance when you first came to California, but when you became connected with them in '26 or '27?

A. I was credit manager first, and—excuse me. The way I started in there was to revise their cost system. Some of the men that worked for us in the Jack Lane Company were experienced in cost systems; and I was talking to Mr. Graves, the then president of the company, about the problems. It was a social conversation more or less. And he was having trouble working out the cost system for the company; and apparently the boys that had evolved

(Testimony of Jack Lane.)

this system out in Alhambra had not gotten a satisfactory type of system. And so I looked it over and had one of our fellows figure out a new cost system method for them.

Q. What do you mean when you say, "had one of our fellows look it over"?

A. One of the boys that worked for us.

Q. You mean worked for you in your business?

A. Jack Lane and Company. Of course, that might be a misnomer, as business management. We called it that, but we did everything under the sun.

Q. At any rate, someone in your Jack Lane Company and [284] under your employ did look over the books of the American Pipe and make some suggestions to them?

A. That's correct. And then I went over it with them, and in the analysis of those costs, we discovered that there were two problems that they were having with their sales. One is that they were only accepting the type of sales from what we called major oil companies and major companies where there was no credit involved; and we had the idea that by not turning down so many requests for sales that were not—what would you call it—not substantial, they would set up a system whereby they could analyze a man's credit or prospective purchaser's credit with a little—a little more thoroughly; and it would increase their sales.

So out of that evolved the job of credit manager, which I took; and I was credit manager for the company probably for ten years.

(Testimony of Jack Lane.)

Mr. Maiden: Was that American Pipe?

The Witness: American Pipe and Steel Corporation.

Q. (By Mr. Baird): You were on the payroll then for ten years as credit manager, approximately?

A. Yes, before I started taking on other duties.

Q. Now, Mr. Lane, just before we get into the story; I want to ask you a question or two about your training for this type of work. You have made reference to the fact that you had [385] taken numerous correspondence courses. May I inquire, have you had any considerable amount of formal education? A. I haven't had any.

Q. So that your training and education has been through correspondence courses?

A. That's correct; and contact with other people.

Q. Can you just elaborate on that a little bit as to what you did in that regard, without taking too much time?

A. Well, it started out when I was working for the General Petroleum Corporation. One of my bosses was one of the owners of the company, and he asked me if I knew anything about auditing or bookkeeping. They had a job as payroll auditor and sort of a travelling accountant at their different outlying bases. And so I told him that I didn't have.

He said, "Why don't you learn?"

Because I had asthma at that time, and the doctor, the company doctor thought by changing me around to different localities they could cure the asthma.

(Testimony of Jack Lane.)

And so it was a means to an end, as far as the company boss was concerned.

But I took a course in auditing, and of course that didn't appeal to me very much; but I did finish the course.

So then I was getting some other courses down on —I think it was either Spring Street or—one of the second-hand shops, and I noticed many different types of courses at a very low rate, and everything I could buy for five or ten [286] dollars; I just bought the course, whether I knew anything about it or not.

Q. You bought the books and the material from a second-hand store?

A. That's right. They were all correspondence courses. So when I completed those, I had a much broader viewpoint of certain subjects than I would have if I hadn't bought those.

Q. Coming down to your job of credit manager, will you state whether or not your responsibilities gradually enlarged at the American Pipe and Steel Corporation?

A. Oh, yes. In fact, any time they could get me to do anything, they would just have me do it. I became secretary of the company in, I think, '36 or '37. And I was secretary for a couple of years. I was their advertising manager for two or three years.

I am speaking now of all of the time prior to the time I took over control. After I took over control, I went in as vice president. But I was thoroughly

(Testimony of Jack Lane.)

familiar with the company's operations, and their mechanical operations, as well as their business operations.

Q. Now, Mr. Lane, what event took place that ultimately resulted in your taking over control of the company?

A. Mr. Welch, one of the partners that had control, died in——

Q. When you say, "partners," you mean one of the principal [287] shareholders?

A. One of the principal shareholders. Let me explain that: There were three men that had 50 per cent of control, I mean 50 per cent, or control of the company. They had over 50 per cent.

Q. Three men that had over 50 per cent?

A. The three of them together had over 50 per cent. One was named Welch; one was Mr. J. E. Graves; and one was named Burroughs. And Mr. Welch and Mr. Graves had most of the shares between them. I have forgotten exactly how the percentage stacked up. But Mr. Graves and Mr. Welch actually ran the company, and Burroughs was secretary-treasurer of the company.

Mr. Welch died of cancer very suddenly, I think, in November of '37, sometime along the end of '37. And then Mr. Graves died of a heart attack very suddenly in——

Q. In the same year?

A. ——in the early part of '38. It was three or four months later. And then Mr. Graves' son-

(Testimony of Jack Lane.)

in-law became president. He was vice president at that time.

Mrs. Graves then moved in with her son-in-law, into her son-in-law's home, and one day her attorney called me and asked me to come over and see him at his house. He lived over near Western Avenue, some place.

He suggested that Mr. Graves and the then president [288] of the company were not getting along; they hadn't spoken for quite some time. It was——

Mr. Maiden: Pardon me. If your Honor please, it seems to me that this is taking an inordinate length of time in discussing matters that I don't see how can have any bearing upon why Mr. Lane acquired Palos Verdes stock in 1943.

Mr. Baird: I think it has a bearing, and I think that we are——

The Court: I think it has a very remote bearing, if any.

Mr. Baird: We are very rapidly approaching the point where we will begin discussing the acquisition of the Palos Verdes project, the Palos Verdes stock. But it is necessary to get into the record Mr. Lane's experience, his broad business experience, so that the Court may know and may understand when this transcript is read.

The Court: I have already formed my impression of Mr. Lane, before he took the stand.

Q: (By Mr. Baird): Will you proceed as rapidly as you can without going into any details? I believe you stated that Mr. Graves had passed

(Testimony of Jack Lane.)

away and that Mrs. Graves' attorney proposed to make some proposal to you about buying some of the stock. Tell us briefly what that is.

A. Well, she asked me to—I mean, her attorney asked [289] me to buy the stock, and at that time I was not interested in it, because it was 19 per cent of a closed corporation. It was a small company. And they had had a record of losing money for a number of years, back to 1929, ten or eleven or twelve years.

So, finally, he said he would get one of the other stockholders to go without shares, and give me 50 per cent; it would give us 50 per cent and control of it, so that we could change the operating policies of the company.

I had quite a few ideas on how to improve the profits of the company and what could be done with it. But I couldn't do anything with that management.

So the attorney said that he could get one of his previous clients who then owned some stock, which that stock, with the Graves stock, would give us control. And in that event we could change the policies of the company.

So he contacted the other stockholders, and they agreed—of course, I didn't want to put any money into it at that time. In fact, there was one condition of inventory that the company—the company's position was without inventory—I am trying to make this clear. Their entire inventory was owned by the Allenwood Steel Company in Conshohocken, Pennsylvania, and it was stored in a company build-

(Testimony of Jack Lane.)

ing on the company's plant property. And it amounted to about $120,000 in value. And the fact that the Allenwood was close to the heads of this present management of American Pipe, I was [290] worried or concerned about whether they would pull that inventory out. So I talked to a man by the name of W. G. Kreiger about if the steel company took the—I am talking about Allenwood—took the inventory out of American Pipe's possession, then we would be faced with the possibility of having to go out and put $120,000 into steel in order to keep American Pipe going.

Q. Would you explain what you mean by the Allenwood Company withdrawing the inventory? That hasn't been made clear as to how that could be.

A. They were the supplier of the raw material to American Pipe and Steel. And American Pipe is in the business of fabricating steel products of sheet and plate steel, which the Allenwood was the supplier of that sheet and plate.

Q. Would you say that was in the nature of consigned merchandise?

A. No; it wasn't consigned. It was owned by Allenwood. And American Pipe had the right to, when they purchased anything from Allenwood, they merely drew it out of their warehouse. Allenwood had an office here in town, but Allenwood sold out of American Pipe's warehouse, because the materials belonged to Allenwood, just like they would sell to American Pipe.

(Testimony of Jack Lane.)

The only advantage of having the steel out here was the fact that it eliminated a 90-day lead time, and gave Allenwood a competitive position with the West Coast steel [291] manufacturers.

Q. Now, at any rate, in order to pass on, you did, as a result of those negotiations, acquire some stock in the American Pipe and Steel Corporation at or about that time?

A. Yes, I acquired the stock; and Kreiger had an option to buy half of it.

Q. And that gave you and Mr. Kreiger then, control of American Pipe and Steel?

A. Yes. We had 96 per cent, I think; 48 per cent each.

Q. I believe you stated that at or about that time you were elected vice president? A. Yes.

Q. Of the company? A. Yes.

Q. And what if any office did Mr. Kreiger have at that time?

A. He was secretary, I think, at first; and then he resigned later on and then came back in as secretary-treasurer, I believe, when he came back the second time.

Q. And about what period of time did you become president of American Pipe and Steel?

A. Sometime in '42; I am not certain of the date. But I think it was—the records can show it.

Q. Approximately, 1942? [292]

A. Yes.

Q. Now, there has been some testimony here by

(Testimony of Jack Lane.)

Mr. Carl Dahlberg that you have heard. Mr. Dahlberg is now a vice president of your company?

A. He is vice president and in charge of sales.

Q. And how long have you known Mr. Dahlberg?

A. I think I met him in 1931 or '32. He was going to high school or just getting out of high school when I met him.

Q. Did he do some work for you at or about that time?

A. Yes. I had an office in the Foreman Building for—I don't know how long a period of time it was—and he was there. Then we moved out to the Clem Wilson Building on Wilshire and La Brea, 5225 Wilshire, I think is the address.

And he was working for me during the period that we were in those two offices. I was operating several oil companies at this time, and I owned a 40 per cent interest in the Sam B. Herndon Oil Company. And their wells were down at Venice. And the other company was Consolidated Crude Corporation. I was trying to think of some of the other companies. They have slipped my mind.

Q. During this period of time, did you engage in any sales or leases of oil properties?

A. Oh, yes, that was what we were doing, buying and selling leases. [293]

Q. Did you during this period of time engage in any subdivision work?

A. You mean during the period that we were in the Foreman Building?

(Testimony of Jack Lane.)

Q. Yes.

A. We looked at several deals, and I can't think of whether—there was one out in San Marino, and I can't think of whether that was in—it was while we were in the Foreman Building. But we weren't able to make the kind of deal on that, money-wise—in fact, we couldn't raise the amount of cash they wanted for that subdivision at that time. Then we did buy this 33 acres that Dahlberg testified to, and that is the closest property now to the center of Glendale, as close as what we call undeveloped property; it is right at the head of Grand Avenue, about ten blocks from the main business district of Glendale, and there is development all around the property. We intended to subdivide it into about 15 or 20 homes during the middle '30's, and the men that were in the deal didn't have the cash at that time. We tried to raise it several places, and real estate property was down. So we still have that property, incidentally.

Q. You mentioned a few moments ago something about your subdivision experience in the Clearwater Project up in the Bay Area near San Francisco.

A. Clearlake. [294]

Q. Clearlake, excuse me. Will you just tell us briefly what part you had to do with that subdivision project?

A. I think they called us solicitors and/or junior salesmen or something. And the way the company operated is that they had a large market there. I can't think of the name of the market now.

(Testimony of Jack Lane.)

But they would pass cards out to the various people at these markets to obtain leads——

Mr. Maiden: 'Pardon me. I still think Mr. Baird is going into too much detail.

Mr. Baird: I simply want to show the man's experience.

Mr. Maiden: It seems to me you have shown it.

The Court: If it is just his experience, I think it amply appears that he is a man of wide experience.

Mr. Baird: Very well.

The Court: Of varied types.

Q. (By Mr. Baird): There has been some testimony here which you have heard to the effect that Mr. Robert Archer contacted you sometime in 1942. I will ask you if that coincides with your recollection of the date that that incident occurred?

A. The first I heard of Palos Verdes from Archer was on May 29, 1942, and at that time we were in discussions about a chemical warfare service contract that we were endeavoring to obtain, and the way it came about was that on the Sunday prior [295] to May 29, 1942, Archer and I were together on that Sunday, and it was a social visit, and I mentioned to Archer that I was very busy in endeavoring to get a contract with the Chemical Warfare Service to work out a—I had been asked by the War Production Board—excuse me, I had been asked by the War Production Board to bid on these tanks, because the Chemical Warfare Service had not found a manufacturer to manufacture this type

(Testimony of Jack Lane.)

of lethal gas container which they wanted in large quantities.

Archer stated that he knew the head of the Chemical Warfare Service in Los Angeles, and I said, well, I didn't know him; I was dealing with San Francisco.

And he said, "Well, I will take you down to meet him. I have known him for several years. Maybe he can help you get this contract."

So, on the following day or the day after, Archer made the arrangements to take me in to meet Major English; he was a major at that time. His uncle was P. X. English, who was right under General Porter, and P. X. English was a general. And for that reason Bob English thought that—I mean Bob Archer thought that English, his friend, could help us obtain this contract by the reason of the fact that his uncle was one of the top generals of the Chemical Warfare Service.

For that reason I thought it would be a good idea to take me in and meet English. During that conversation English [296] advised us that they had nothing to do with the procurement of this type of a contract, because it hadn't officially gone to the Chemical Warfare Service in his office yet. He said that apparently the Chemical Warfare had obtained —endeavored to get these containers made at the then present sources of manufacture, but the whole total capacity in the United States at that time was 25 containers a day, and they needed around 500. And anybody going into it would have to have new

(Testimony of Jack Lane.)

facilities, and that would be taken care of by an entirely different group, which he had no connection with.

So, after we left I was talking to Bob about how far the contract had gone at that point, and I am talking about Bob Archer. Excuse me. And so I said why didn't he come in with us, because I felt that, from the negotiations with the War Production Board, we were going to get a chance at this contract, and it would take considerable travel for me. There was quite a job cut out for us. We had already made one or two trips to San Francisco at that time, and we could use him in the negotiations and in the expediting of the contract, should we get the contract.

He said he'd think it over. And on May 29th Archer and I had dinner together, and he told me——

Q. Just a moment. Did you say May 29th or July 29th?

A. July 29th, excuse me. I'm sorry. It was July 29th, 1942. We had dinner together, and at that time he advised me [297] that he had a line or had some information about a company near San Pedro that had about 700 lots, and he was trying to get control of that company; and that he would come to work for us for a period of time, providing we would loan him—at that time, he didn't care whether it was I who loaned him or American Pipe and Steel that loaned him the money, but he wanted

(Testimony of Jack Lane.)

to borrow $2,500 to help him finance this acquisition of this company. At that time, I did not know the name of the company.

It was a few days later before he told me the name of the company. In fact, I didn't ask him, but he said if we would loan him the $2,500, he would let us have the stock as security. He wanted to borrow the money anywhere from six to ten months. He wasn't quite sure, the kind of deal he was getting into; it wasn't the kind of deal he could borrow money from the bank.

So I told him I would talk to Kreiger about it. Kreiger had a half interest with me, I mean half——

Q. I will ask you whether or not, about a week ago on Sunday, when you and I were inspecting certain war contract files in your office in Alhambra, if you located any memoranda or memorandum of that conference that you had with Mr. Archer in July of 1942?

A. We did. We located the note that I made at that time. In fact, we didn't know it was in existence until we [298] found it in the file.

Mr. Baird: I would like to have this marked for identification.

The Court: 19 for identification.

The Clerk: 19 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 19.)

(Testimony of Jack Lane.)

Q. (By Mr. Baird): Mr. Lane, I show you Petitioners' Exhibit 19 for identification and ask you what that is?

A. This is a memorandum to my secretary on—what do you call it, the calendar page, dated Wednesday, July 29, 1942, which requests my secretary to ask Woody—that is my partner, Kreiger—what his opinion is.

Q. Now, just a moment. Before you get to explaining that, I will ask you whether or not you were aware that that memorandum was in existence until a week ago Sunday when we were inspecting files in your office? A. I was not.

Q. Will you state whether or not that memorandum is in your handwriting?

A. Yes, it is in my handwriting.

Q. And in what particular file was that memorandum located?

A. It was in the personnel file of two or three men [299] that we had had a dispute with, either the War Production Board or some government agency over manpower—let's see, what do you call it, where you steal manpower from——

Q. You had some dispute over the use of——

A. These men coming and working for us. And the way it happened, you said you wanted to see every file on the Chemical Warfare Service.

And I said, well, you had seen every file that would have any bearing on this case.

And you said you didn't care about that. "Let's take a look at them and see what they are."

(Testimony of Jack Lane.)

So you were looking through some of the files, and I was looking through this other file; in fact, I had made the remark that it wouldn't do us any good to look through these files. But in going through the files, which was marked "Personnel for CWS contract," there was a file on these various people that had the problem of leaving one war plant and coming with another war plant.

Q. All right. I think that is sufficient explanation for that.

Now, what is this page that you have before you, I mean, can you explain what that is?

A. Well, in those days, instead of using the little pad that I use on my desk now, I used a pad the same size to write notes on, but in those days I used a—what is it—a diary, [300] I guess it is, a diary book, plus another little plain pad. And through the file we found two or three of these diary pages out of the file, where I had made notes on these, rather than on the plain piece of paper, or on some other pad that was on my desk.

Q. You did not file the book in the past?

A. No; this page is in this one file, but in some other files we found some other pages.

Q. This memorandum relates to the conversation that you had with Mr. Archer at the time that you were discussing with him the possibility of his going to work for American Pipe?

A. Correct. I wrote that right after Archer left, or while he was still there; I am not sure. But it was written that night when we had the conversa-

(Testimony of Jack Lane.)

tion, because we wanted to get him on this job if he was going to take the job.

Mr. Baird: We would like to offer this in evidence, Petitioners' Exhibit 19.

Mr. Maiden: No objection.

(The document heretofore marked for identification as Petitioners' Exhibit No. 19 was received in evidence.)

Mr. Baird: This is very short and, in order to keep the continuity going, I would like to read this, because I do need to interrogate the witness about it.

Your Honor might like to look at that while I am reading the photostat. [301]

"B—Ask Woody what he thinks—Bob will take expediter job at 100 per week providing we loan him 2,500 for 6 months to 10 months. Says he has knowledge of an outfit that owns between 700 and 800 lots near San Pedro and that there are about 3,500 shares outstanding. Says stock is selling on Spring Street between 25 and 50 cents. Says he can borrow money for sales campaign from Morgan Adams (mortgage guarantee) if he can get control of corporation (50 per cent or more). Will pledge stock or security for loan. Says 200,000 workers now in area and about 10,000 homes short."

Q. (By Mr. Baird): Will you explain to us, please, what you meant when you said the letter "B—Contact Woody"? Who was "B" and who was "Woody"?

A. "B" was the initial for Betty Fenton, my

(Testimony of Jack Lane.)

secretary, and "Woody" is Woody Kreiger, was my partner at that time. And he owned 48 per cent of the stock of American Pipe and/or had the right to own it, and so that I—neither one of us had completed the purchase for the stock at that time, but we had control by reason of that.

Q. Now, why was it necessary for you to write this letter to your secretary to have her contact your business associates?

A. Well, that is what I do all the time every time my [302] secretary can handle something, well, as a matter of a phone call or anything like that, I have her do that. But in that particular instance it just happened that night and apparently I wasn't going to be in the office the next morning, and I wanted her to find out from Woody if he thought it was something to go into, if we were interested in talking about it, and, if we were, for her to make the apointment with me. That is a lot of shorthand for the way we do things.

Q. Did Mr. Kreiger spend a considerable portion of his time at the plant, or was he engaged in outside operations for the company?

A. At that time he was the head of the Kreiger Oil Company, the managing partner, whose office was at Clearwater, California. He was also the general partner of the—I think it is the Kreiger Motor Company, that is the Ford-Mercury-Lincoln dealer in Lodi, California. And he spent probably a third of his time at Lodi, because his father—when his father had died a year or two before—maybe three

(Testimony of Jack Lane.)

years before—had left an insurance business, a bank, an automoblie company, a refinery, some oil well properties, oil producing properties; so he was active in his own business besides being an officer in American Pipe.

Q. Now, Mr. Lane, how long have you known Robert Archer?

A. Since about '30 or '31, somewhere along in there, maybe '29. [303]

Q. Had he ever worked for you before?

A. No, but we had been in other—let's see, we were in that property at Glendale, and then we had a group from the Title company over here, and we started a company to invest in the oil business. But I don't think that—we had a lot of meetings, but we never could find a piece of property or leases or subdivisions; it was the Title company boys that had suggested the subdivision out at San Marino, and that is how we got in touch with that.

Q. Did you at that time consider a subdivision at San Marino?

A. That is the one I mentioned a while ago. It was George Dunnerson and Bill Whitman and Bob Archer and Roy Dolley and Jack Lane were the people. And we were forming two syndicates; one, we called the Conversation Oil Company after a long period of time, because we had had so many things presented to us that we couldn't get enough—a meeting of minds, so we finally passed it off. But we had meetings every week for, oh, months.

(Testimony of Jack Lane.)

Q. You don't mean to say that you actually organized a corporation by that name?

A. I think we did. I think originally it was a syndicate, and then I am not sure whether the corporation was ever organized or not, but that was facetiously called the——

Q. Conversational Oil Company?

A. Conversational Oil Company. [304]

Q. Nothing ever resulted except conversation?

A. That's right. But out of that same syndicate, that is how we came to buy the Glendale property. And we spent a lot of time on that San Marino property, but we couldn't——

Q. If I understand you correctly, the San Marino property was not for oil——

A. That was subdivisions; in fact, it was already subdivided. But it was a subdivision that had gotten into financial trouble, and we were trying to buy it.

Q. About what year was this?

A. I think that was '31 or '30; maybe it was '32. It was right after the big crash.

Q. And for the purpose of the record, San Marino is a community adjacent to Pasadena?

A. It is south of Pasadena and north of Alhambra. It is a community between the two cities. There is San Gabriel and Pasadena—pardon me.

Q. Coming now to the chemical war contract or your contracts generally—before I ask you about the nature of the chemical war contract, may I inquire, had your company engaged in other war

(Testimony of Jack Lane.)

contracts, manufacturing various types of material for the war effort?

A. Yes, we had, although they weren't any of them what we'd call substantial.

Q. And did you, during this period of time, carry on your [305] ordinary manufacturing work with American Pipe? A. Yes.

Q. For the information of the Court and the record, what products did American Pipe manufacture at that time?

A. Well, the list of products, there is more than 500. It is a very unusual list. I think that before I finish testifying we might put a brochure in evidence if you want to do that. I didn't bring any with me.

Mr. Maiden: I think that is a good suggestion.

Mr. Baird: We don't want you to enumerate 500 different products from the witness stand. I simply wanted to get a general idea, and if you will furnish us with a brochure I think that counsel will let us put it in evidence.

The Witness: The main products are pipes and all different types of tanks, and fabricated products of steel, aluminum, or other alloys. Our range runs from 16 gauge to an inch and a half in thickness and, in weight, from a few ounces up to 70 tons in shop-fabricated items; and in the field they go to large field-fabricated and constructed items. We have field men that do the construction in the field, when the products are too large to fabricate in the shop.

(Testimony of Jack Lane.)

Q. (By Mr. Baird): Mr. Lane, did any considerable part of your effort related to the manufacture of pipes for water systems or for gasoline or for—— [306]

A. When the company was started in 1903, its principal product was water pipe for irrigation and subdivision, and water well casing, and different items for agriculture. That includes smudge pots and tanks for water troughs, for horses and cattle, things of that kind.

Then, during the first world war, when welding first began to start, in those days—excuse me—everything was riveted, riveted construction.

Then, during the first world war, the company began welding tanks and different products. And all during the years the irrigation pipe and the water lines for subdivisions had been one of the principal products of the company until just the last, oh, four or five years, maybe a little longer. And the only reason that situation holds true is that we haven't been able to get the priorities for steel.

The Court: Pipes made by extrusion?

The Witness: We do not make extrusion pipe in our plant. But we do have a tube mill, which takes what we call a roll of skelp, and that roll of skelp weighs about eight to ten tons, and it is just a sheet of steel this wide, but may be 500 to 1,000 feet long, depending upon the thickness, and that is rolled up, just like a roll of paper. And the one end of that is cut into a tube mill, and, as it goes through each roll, the steel is rolled up into a form

(Testimony of Jack Lane.)

of a pipe, and then we have a welding machine on there which welds the pipe, and [307] then that takes up about half the machine; the second half is for sizing and straightening. And, as it comes off the tube mill, there is a saw that cuts it to any length desired by the customer. It is all automatic.

We also make other types of pipes, for instance, large sizes on the aqueduct here, or the large sizes of pipe that run up to 10 feet in diameter, for instance; that is taken by a plate and put through a regular pyramid roll, and we roll that up into a shell, and then weld that. That is the same.

The Court: Weld the joint?

The Witness: That's right. And then we make dredge pipe. But most of irrigation pipe, from three to six inches, it is all made on the tube mill in our plant. Then the larger sizes are made by rolling it up into lengths of steel; sometimes they are four feet long; sometimes they are ten feet long; sometimes twenty feet long, depending upon the type we are rolling.

Q. (By Mr. Baird): Now, Mr. Lane, have you done any work for the Chemical Warfare Service?

A. The Chemical Warfare——

Q. Has your company had any contracts with the Chemical Warfare Service prior to the contract about which you were negotiating when you contacted Mr. Archer, and which you [308] subsequently obtained about September, 1943?

A. No, we have not.

(Testimony of Jack Lane.)

Q. This was the first work that you had done for the Chemical Warfare Service?

A. That's right.

Q. Now, will you explain to us, please, how you became interested in that particular contract and what the nature of your negotiations were?

A. During June of 1942, May and June, we received an inquiry from the War Production Board in San Francisco, and they asked us to stop in there and see if we could build a certain type of tank, which I went in to see them when I was—one of my regular calls to San Francisco.

And they showed me a drawing, which, at that time the drawing was classified, and they had cut off the—what do you call the block on the drawing, who the drawing belonged to—and asked me if I would be interested in producing this type of tank.

I told them at that time that forge welding was quite different from any other type of welding, and I did not know of anybody in the United States doing forge welding on tanks, because it was a sort of a lost art. They do it on horseshoes, and I had seen it done on horseshoes. I had seen it done in the railroad forge shops, but I had never seen one done on a tank. [309]

Q. Mr. Lane, can you explain just briefly what this tank is, something about its size and proportions and shape and so forth?

A. Yes; this tank weighed a ton, called a one-ton container. It weighs 1,600 pounds, and as an artist, I can't draw it, but I can show you draw-

(Testimony of Jack Lane.)

ings. I can bring in drawings of what the tank looks like. But it is about 30 inches in diameter, roughly, and 8 feet long. And the shell is straight, and then the heads are extra heavy, and they are put in the shell opposite to the way you ordinarily put shells on. I have forgotten the word that they use on it.

And then those shells and the heads are heated up to the welding temperature, and then those shells are rolled together just like—if you have ever seen a blacksmith take a horseshoe or two pieces of metal and heat them up to a very bright orange, and then he puts them together, hammers them together; well, he is making a forge weld.

We had to do that in this particular tank. They were in the East, the people that had been making them for the government since the first world war, had been making, I think, eight or ten a day for the ammonia industry. And they had a furnace in which they heated up a part of a tank about this long at a time.

Q. When you say "about this long," tell us in inches.

A. It is about six to eight inches, and they had a [310] furnace which they would heat six to eight inches; then they would withdraw the furnace, and they had an air hammer which they would hammer two pieces of steel together; they had that both in the shell and in the head. So——

Q. Mr. Lane, may I ask, did this particular tank

(Testimony of Jack Lane.)

—was it a combination of two tanks, one inside the other? A. No.

Q. I see. All right.

Q. But the reason for the forge welding was that, because of the type of lethal gas that they were putting in there, that the container was to carry, in transportation, if they had used a welding rod to weld the tanks together, they were afraid of contamination from the different types of steel, of setting up an electrolysis of some kind, and as that War Production man said to me at the time, if one of these tanks leaked in a railroad yard, for instance, and they had a car of them in the railroad yard, everybody would be dead in the yard and they wouldn't know which tank would be leaking. So they had to be absolutely sure that the tanks had no foreign matter whatsoever in them. That is why they required the forge welding.

Getting back to the construction, the people in the East were making them by this hammer method; but they needed 25,000 containers yesterday, as they called—as they said at the time. But they said that they would like to have around [311] 250 a day from us. And then it came down, I believe, to 150 a day. But it was a tremendous quantity, in view of the fact of the way they had been manufacturing them.

So the War Production Board man asked us if we could design a system. I told him that we could make it if we had the equipment. But I said it was a very slow and tedious process; it would take a

(Testimony of Jack Lane.)

lot of equipment. So he asked to make some estimate on what it would cost to design equipment which we could turn these out with women, because there was a shortage of manpower, and do it more or less automatically.

So this was during June. We are talking about the negotiations, and we went back to Alhambra and talked it over with our engineer, decided how the equipment could be designed. We made a rough estimate of what a plant would cost to set up to make these tanks, and we wrote a letter to the War Production Board in San Francisco, which is dated June 26, 1942.

That is the first quotation that we made on these tanks to anyone.

Then during July we had several conferences with them and the Chemical Warfare Service. After the War Production Board received our letter, then we were turned over to the Chemical Warfare Service, and we had the negotiations with the San Francisco office of the Chemical Warfare Service.

Through our conversations there, we had the impression that they had tried a number of firms to build this type [312] of tank, and looked like we were going to get the tanks, but we weren't certain. In fact, we were told at that time that they hadn't had their purchase order or some document that they get to allocate the funds for this type of a purchase.

That was the situation of where the negotiations were at the time that I met Archer. After I met

(Testimony of Jack Lane.)

Archer, after he came to work for us—and I think it was in August—the Chemical Warfare Service had in San Francisco—Colonel Lyon asked me if I would go East and look at the two plants that were manufacturing these tanks in the East, because he had a request from General Porter, who was then head of the Chemical Warfare Service, as to why some company in the West would be able to build these tanks in such large volume, when the fellows that had been there years wanted, I think, two million dollars—been in this business for years—wanted two million dollars to build a plant to turn out these units that they required. And Colonel Lyon asked me if I would go East to see these plants, and at the same time discuss with General Porter's office our ability and our features—or, not the features—the methods in which we would use in producing this forge welding, because the mechanical brains, as they called them, were back there; and the fellows that could see whether or not our ideas had any sense to them.

Q. Did you make that trip?

A. We made that one and several others. Oliver Killan, [313] my chief engineer, went back there first, I think it was in August. If you need the definite dates, I will be glad to get them.

We went back there and we visited the Carbondale plant of the American Car and Foundry, who had been making these tanks and had first made them back in 1860, I think it was, or back in the Dark Ages; and they have been in operation con-

(Testimony of Jack Lane.)

tinuously since 1887 making them. And in the early days they were made for chlorine rather than for these lethal gases, but it was an adaption to the lethal gases. We visited their plant and then we went to a town just outside of Youngstown, Ohio, called Columbiana, Ohio, and we visited the Columbiana, Ohio—I think it is the Columbiana Boiler Works. I am not certain about that name.

We went to New York and talked it over with the vice-president of American Car and Foundry Company, in charge of production.

We went to Washington and talked it over with Colonel White in General—well, he is supposed to be the brains—I have forgotten the General's name whose office Colonel White was in.

And then we came back to Los Angeles and——

Q. May I interrupt——

A. ——made some more calculations.

Q. Did you have any definite assurance at that time, [314] when you made that trip East and then came back to Los Angeles, that you were going to get this contract?

A. No. We hadn't even put our bid to the Chemical Warfare Service at that time. This was in—you see, we had to do two things: Tell them the price we could make these tanks for, and the other was to tell them the cost of the plant and the facilities to turn out the units.

Q. Then you had a third requirement, too, did you not, to convince the authorities that you had the ability to make it?

(Testimony of Jack Lane.)

A. Yes, that is true. We came back from there and we engineered and did that—instead of thumbnail, we did it more closely—to decide what the cost of putting up the facilities would be.

Q. You mean that you had your engineers prepare the usual schedules and specifications and drawings and so forth?

A. Yes. They had to produce the theory first and decide then how heavy the equipment must be, what kind of equipment it would be. They had to do the design, what we will call, first, and you design equipment as to the method you want used, and then, second, you take that design and engineer it so it will hold the work and do the work in the amount of time that you have to do the work. And then you figure out the installation, where you will put it, and then you can arrive at the installation cost. Then you send out bids, requests [315] for bids for the components for that equipment you have engineered, and get the prices, and that is the way you find out how much it is going to cost to erect and engineer and build the facilities.

Q. You completed that preliminary work then and submitted your bid, apparently, somewhere before the first of September or maybe shortly after the first of September?

A. I don't remember what date the bid went in, but it was in September. But the Chemical Warfare in San Francisco, as I recall, did not receive their funds for the job until September 3rd. I may be mistaken about that date. It was either August

(Testimony of Jack Lane.)

or September. And I don't recall the exact date on which the bid was put in, because there were quite a few things to work out. They had questions asked about the engineers, and I think we submitted the bid either two or three times. I am not sure of that, but I can find out if it is important. I can get the files.

Q. Why was it necessary for you to submit it two or three times?

A. The first time was to the War Production Board, and that was just an off-the-cuff bid, a range price, because these tanks were being purchased at that time by the Chemical Warfare for something around $190 laid down out here in their ordnance depot. I think it was in Utah, either Utah or Colorado. And, for instance, if we would say we can build [316] these tanks for $250, we would have been out the window right then. But the fact that we submitted some bid within range, then they had us go to the additional work of going East and looking into the thing more closely, and then when we produced our second bid, they said, "Now, why do you need this type of furnace, and why do you need that type of furnace," and there was a number of questions like that.

So then we withdrew that bid, and they would tell us exactly what they wanted to bid on. So we did that. It also depended upon some personnel that we had—we were contemplating getting. That had an effect on the bid price.

And then their price analysis, their engineers

(Testimony of Jack Lane.)

went into it and checked it, so there were a number of bids, and I think there was even a bid after we had been awarded the contract; I have forgotten exactly.

Q. You were finally awarded this contract?

A. Yes, sir.

Q. Now, can you tell us approximately how long that contract was in existence?

A. Well, it took us until March, I believe—let's see, the contract was awarded, I believe, in September or October of 1942, and I think we finished the plant and went into production in March or April of 1943. I am not certain about those dates, but it is close. It is within 30 days.

And we had considerable trouble in getting the tanks [317] to the various specifications, because the specifications at this time tightened up during the interim period. At the time that we took on the job, San Francisco knew very little about the construction of the tank, and there were some assumptions we had to make in the specifications.

Then, during the interim period while we were building the plant and we were getting into production, the Chemical Warfare Service had issued a contract to the Smith-Emory Company of Los Angeles to inspect the tanks, and the Smith-Emory Company, in endeavoring to become acquainted with the specifications, read a lot of things into the specifications which we felt were not in there. So we had considerable argument with them over the interpretation of the specifications.

(Testimony of Jack Lane.)

Q. Can you tell us roughly how many tanks did you make under this contract?

A. No, I can't.

Q. At the time the contract was terminated, I believe you stated that was in October of '43?

A. No, I think we got the contract in October of '42. I think the contract was terminated in September of '43.

Q. Just to refresh your recollection about the date of the contract, I will ask you to look at this document and see if that refreshes your recollection as to the date the contract was entered into?

A. Well, yes. It says, "This contract is entered into [318] this 3rd day of September," and that is the time——

Q. What year?

A. September, 1942. But that was the time that we signed the contract and returned it to them. But I don't think it was actually officially signed by them and issued to us until after the financing was completed.

Q. At some later date?

A. At some later date. I think the only date that we have on that is the letter of transmittal from them saying they were sending the contract to us signed, but I am not sure.

Q. We can check that up during the noon hour.

A. We had considerable negotiation on the financing of that contract, and on the pricing, because in the contract, originally, they were to have a price redetermination clause, which would permit

(Testimony of Jack Lane.)

the government to recapture the monies if they were over the profit that we had set out to earn there, and then later they took that clause out, and then we had to analyze it from there on. It is a little hazy to me.

Q. Was this contract subject to renegotiation? I admit the contract would be the best evidence.

Mr. Maiden: I will stipulate that it was. I just know it must have been.

A. I don't know whether the Renegotiation Act was in that, but I think it was. [319]

Mr. Sullivan: The Act may not have been in effect, although there probably was something equivalent, substantially equivalent at that time.

Mr. Maiden: It was certainly in the offing, I expect.

The Witness: They sure tied us down at this time, I know that.

Mr. Baird: I think we can clear that up during the noon hour. I am sure that there was some provision about renegotiation, a recapture clause or something. The government didn't let these things go without limitation. That is for certain.

Q. (By Mr. Baird): Can you tell us whether or not, after you got this contract and got started in your efforts to manufacture these tanks for lethal gas, did you have any problem or headache or trouble with the putting of the manufacture of those tanks into effect?

A. We certainly did. The files are full of it. I

(Testimony of Jack Lane.)

mean there are stacks of evidence where we had trouble.

Q. Just briefly, and not to take a lot of time, what was the principal cause of trouble, what difficulties did you have?

A. Well, the first trouble we experienced was with the heats and the design of the furnaces, and that was one of the [320] first. We may have had other troubles. And then we overcame that. And we had labor troubles and then inspection troubles, and we had inspection troubles right up to the end.

Q. Just briefly, what was the nature of this inspection trouble?

A. The Smith-Emory people had a man at our plant—I can't think of his name now—but he was their plant representative, and he had never had any experience in the construction of steel. He was some relative of—I think he was some relative of a man—Slaytor was the man who had control of Smith-Emory. His past experience had been checking the cement on cement bolts, I mean, his previous experience had been that. So he started out on the inspection of the threads, and he said that it required a class 4 thread, when we said that there was no thread specified, and that we could not make a class 4 thread to this particular specification; it was an impossibility because of the type of steel it was, and the process the steel was put through in heating up the steel to weld the tanks, weld the heads into the shells.

(Testimony of Jack Lane.)

Q. Where were these threads that you were talking about?

A. They were in the heads of the tanks, and the specifications set no—had no specification on the threads, but the government gauges that were sent out here were for a gauge to check the gauges of the inspection company, rather than to check the threads on the tanks, and on this real soft [321] steel the melting point on a thin piece of metal is very much lower than on a large piece of metal. So when we put the tanks into the furnace and brought the heat up at the temperature for welding, it would burn the tip off of the threads off, and we had quite a rassle on those threads. Finally, it was decided that a class 3 thread was what the government wanted.

And that condition went on for quite a while. Then there was other things——

Q. Did you lose considerable time and incur considerable cost because of that?

A. Yes. I think the inspection troubles we had delayed the job probably two or three months.

Q. What, if any, additional cost did that impose on your company?

A. Well, I don't know. I mean it was substantial, but——

Q. Can you tell us approximately? Of course, you wouldn't know. The books would be the best evidence. But I thought you might tell us approximately.

A. I don't know approximately.

(Testimony of Jack Lane.)

Q. All right. What was the occasion for your receiving this notice of cancellation, if you know?

A. Yes, I was told by them that at the time the tanks were ordered a boat had been found out in the Baltic Sea with this gas in it, and all the crew was dead. And it was a German crew—no, it was a Russian crew, was found in German [322] waters, and they suddently realized that we were up against a gas war. And that is why they needed it in such a tremendous hurry. And during that intervening period they had found another gas which was more lethal than that which would—the way they packaged it, it didn't require the same kind of package, but it was more potent. And so if they got into a gas war, they would use the other type of gas, and, therefore, they didn't have the requirement for the large volume of containers that they had ordered.

Q. Are we to understand then that the explanation that you received was that the containers that you were making, the tanks that you were making, were not suitable for the new kind of lethal gas that was to be used?

A. I don't know whether they were suitable or not, but they didn't need them for the new gas. You see, that gas might have been suitable to these containers, but the containers may have been too heavy or there may have been some other reason, or they could have bought containers cheaper.

Q. Did you have any problems or difficulties in connection with your manufacturing of this tank

(Testimony of Jack Lane.)

about getting priorities or getting material or getting it on time in order to keep up your schedule?

A. We had a lot of it. That was what Archer worked on most of the time. There were two or three there; there was Archer, Macy, and I can't think of the other man, was working [323] on priorities. Let's see. I can't remember the man's name now. But they were working on priorities and getting the material together to put the plant together. As soon as the contract was let, we had to get, first, priorities for the equipment to go into the plant itself, and that was a tremendous job. It involves reams of paper work, and it also involves a lot of contact in locating the equipment or the materials, as the case may be; and then making sure that the equipment and material is processed to that component of equipment or whatever it was. So we had quite a bit of work to do in that respect. That was a job that slowed us down.

Then, of course, the weather slowed us down for about a month. In February of '43—wait a minute, at the time we were building the plant, building the building for the plant, we had the worst storm that had been recorded in 50 or 75 years up to that time.

Q. Where were you building this plant?

A. In our plant.

Q. At Alhambra?

A. Yes, on our plant property. But the building itself is—I think it is 30 feet under the hook; that means under the hook of the crane, 28 to 30 feet under the hook of the crane on one end, and it is

(Testimony of Jack Lane.)

probably 20 feet on the other end. And it requires heavy equipment to build such a type of building, and all the foundations were washed out, so it delayed us, [324] I imagine, about a month by the weather. It rained for, I think, a week or ten days straight.

Q. At the time you received official notice of the cancellation of your contract in 1943, did you have a considerable number of these containers on hand?

A. Yes; I think there was about 1,200 of them, 1,200 containers, including components, for instance, heads and shells and completed containers.

Q. Did that include any number of containers that had been inspected and had been rejected by the inspectors?

A. Well, all the ones that had been completed had been—they weren't rejected; they were put in a suspense account for some other board to—not a suspense account, but in a suspense area, we called it. And there is these certain questions where we said that the inspection was at fault, rather than the material.

Then it went to another board of military men, and they had to accumulate a few of those before they had those fellows come out and decide.

Q. So that you had a large quantity of these tanks in that suspense area at the time the contract was cancelled? A. That's right.

Q. Will you state whether or not it then became necessary for you to enter into some rather protracted negotiations with the government about

(Testimony of Jack Lane.)

how your contract would be adjusted [325] or what would be done with your costs?

A. Well, we had a lot of—what do you call it—protracted——

Q. Negotiations?

A. Protracted negotiations, simply because the cost of the building amounted to more—the building and the equipment amounted to more than our original budget that we had set up, and we had not kept up to schedule that they had originally set out in the contract, which we maintained that the schedule was partly our fault and partly because of other things over which we had no control.

And then there was the determination of cost of the completed components and completed tanks and the uncompleted tanks, and because of the termination, which had come at a time before we had completed—had completely set up our accounting, cost accounting records, there was a lot of negotiation as to what costs were allowable under the contract and what costs were not allowable; and there was inventory to dispose of. I think that the inventories of raw materials amounted to some 4,000 tons, or a large figure; I am not sure whether it was four or three thousand, but it was a large quantity of steel cut to size to manufacture these containers, and we had quite a lot of heads in there that had to be disposed of. So all those negotiations took a lot of time.

Q. Well, Mr. Lane, did you know at the time you received [326] notice of the cancellation whether

(Testimony of Jack Lane.)

your contract was going to result in any profit to you or whether it was going to result in a loss to your company?

A. Well, right at the time of the termination, we didn't know how we stood, because there was some question as to whether or not Chemical Warfare could cancel for cause or for the government's convenience. There was some people who had taken the side of Smith-Emory Company, and knew nothing about the reason for the termination. They knew that the termination should be—it was going through. They had a week's notice or something like that, advance notice on it. But the people that sided in with the inspectors felt that the contract should be terminated for cause, and that is for cause of non-delivery.

And the San Francisco office, who knew all the facts and the people had told me about it, said there was no possible chance that it would be cancelled for cause; it was to be cancelled for the convenience of the government. But the financing was done through a V loan.

Q. That is V? A. V.

Q. V as in Victor?

A. Correct, V. It was a type of loan guaranteed by the Federal Reserve Bank and was financed through the Bank of America. [327]

When the termination came about, the Bank of America was immediately concerned as to how we were coming out, because I think we had borrowed in excess of a million dollars from them. The first

(Testimony of Jack Lane.)

indication was that we would be paid around $600,000 on the termination claim, rather than the amount that we had requested.

Q. Would that have resulted in your sustaining a loss or making a profit?

A. That would have resulted in a loss of—I didn't have the figures at that time, but at a quick estimate it looked like it would be between $350,000 and $400,000 lost. Then, as time went on, we got our figures together—I think in October; I am not certain—I can get the date—but after we got our figures together, the claim amounted to $1,252,000. I believe that figure is right. But I am not certain about it; about a million and a quarter though. And then we started negotiating from there.

And later on the San Francisco people said they couldn't see how we would get over $800,000 out of the contract at the top. And they said, in any event, they couldn't approve over a million, because if it went over a million dollars or more it had to go to Congress for approval. At that time, the termination laws had not been put into effect. I think they came out just about the time our termination was ordered, within 30 days or so of that, either before or after; [328] so that question came up as to how they would reduce it.

Q. Did you complete these negotiations before the end of 1943, or were they still in process early in '44?

A. Well, in '43, I think, it was between Christmas and New Year's, that they finally—let's see, I

(Testimony of Jack Lane.)

think it was between Christmas and New Year's that we had an indication of what they would accept. But I don't know whether the papers were dated in '43 or '44. But it was during that period that they came up with this suggested settlement.

Now, it might have been in the last few days——

Q. Do you think you have records from which that date could be ascertained exactly?

A. Yes, I think I can find out.

Q. If that is necessary. A. Yes.

The Court: We will recess until 1:30.

(Whereupon, at 12:00 o'clock noon, the hearing was recessed, to reconvene at 1:30 o'clock p.m., same day.) [329]

Afternoon Session

The Court: We will resume.

Mr. Baird: If the Court please, Mr. Lane has just stepped to the telephone. We left a brief case some place in our hurry during the noon hour, and he will be here momentarily. He is at the public pay phone.

May it please your Honor, I want to take up a phase of this case now which we would not take up at this time were it not for the fact that I seem to have left some documents in Mr. Hair's brief case, and that has to do with the war contracts matter, and Mr. Hair will be here shortly, but I don't want to delay the matter, so I will go on with

another phase of it, even though it breaks the continuity just a little bit.

Whereupon,

JACK LANE

resumed and testified further as follows:

Direct Examination
(Continued)

By Mr. Baird:

Q. Mr. Lane, getting back now to your negotiations with Mr. Archer in the year 1942, I will ask you to relate to us something about his statement to you that he had an opportunity to get ahold of some stock of a company near San Pedro that had 700 or 800 lots. [330]

Now, will you tell us now what took place between you and Mr. Archer, and Mr. Archer and American Pipe, with reference to the Palos Verdes Project?

A. Well, he didn't say at first that it was Palos Verdes. He said that he had this company that he knew of—he had knowledge of this company that had between seven and eight hundred lots, and they had approximately 3,500 shares of stock, and that the sales of the stock on Spring Street were running between 25 and 45 cents per share, and that if he could get 50 per cent of those 3,500 shares, at 50 cents or under, if he just bought them slowly over a period of time, he could control the company for about $1,750 to $2,000; and that was the reason that he wanted to borrow $2,500.

At that time, I thought it was a rather unsual

(Testimony of Jack Lane.)

situation, but I knew that Archer had been dealing in building and loan certificates and bonds and things of that type, that had been very cheap in the past—I mean, have low cost in comparison with their value, that I didn't feel it was impossible, but I thought it was a very exceptional thing.

So I had dinner with my partner, Kreiger, on the 30th or the 31st, I have forgotten now which it was; it was either one day or two days after that meeting with Archer, and Kreiger felt that I was overloaded there at the American and that I needed the man; and if the $2,500 was the only thing that was standing in the way, and if the stock turned out to be the [331] type of stock that the Security was ample, well, that the company should loan him the money to buy it. And one of the discussions was whether or not it should be on a piecemeal advancement or not.

So then I contacted Archer, and I don't know whether it was the next day or a couple of days later, but he started to work for us on the 12th of August; that was a week or ten days later—almost two weeks later.

And we loaned him the first amount of a thousand dollars, I think, on the 17th, and he was to take the shares of stock through the escrow that he had opened in Redondo Beach, so that we would have control of the shares, providing he didn't go through with his deal.

I don't know how he acquired the stock. I am not familiar with that. But along in May or the

(Testimony of Jack Lane.)

latter part of April of 1943, he began to talk about not being able to raise these funds that he had contemplated raising from his various people who he was contacting on the financing of the project, and wanted to know if I knew of anybody that would be interested in putting the money into that kind of a thing.

In the meantime, we had been down to Palos Verdes several times, and we had talked about the property. And he said that—in fact, he got a lot of figures on what the number of plants in that area had been operating at. And there was something better than 200,000 employees that he [332] thought—originally, when he said there was about 200,000 employees, it was closer to 300,000; when they began to look at the actual plants in war work and the numbers of employees in that area.

So, the more I looked at it, the more enthusiastic I became, but I didn't have a part of it. So I couldn't give them any advice on it or do anything about it. But I did have some friends that I thought I could help finance it.

So he agreed with me then that if I helped him raise the financing that at that time he would give me 50 per cent of his profits in the project.

Q. Mr. Lane, if I may interrupt you, in order to pinpoint the dates we are talking about, there has been introduced in evidence a letter dated May 14th; that, I think, is 1943, the Archer letter.

A. The letter, May 25th.

Q. That's right, May 25th. Now, is it after or

(Testimony of Jack Lane.)

about that time that you are now speaking?

A. Yes, it was just before that letter was written that he offered to give me 50 per cent of his profits in the deal if I would help him raise some of the financing. And his original inquiry was to see if I could get Kreiger, who was my partner in the American Pipe, to become interested enough so that either Kreiger or some of his friends would be interested in putting it up, because by that time Archer knew of how Kreiger's [333] father had financed various people in different projects. And he knew his father's activities in Lodi, and knew of some of his friends, and that was the original suggestion.

I said the thing to do first is to find out whether it is a company—if Kreiger and I would want to go into it as a company rather than as individuals, because at that time Kreiger and I were partners.

Q. When you say "partners," Mr. Lane, I take it you are using that term in a very general sense. If I understand the situation correctly, you were equal owners of stock or had the rights to an equal amount of stock? A. In American Pipe, yes.

The Court: You were associated?

The Witness: Associates, yes.

Mr. Baird: All right.

The Witness: And so that's when I wanted to take it up with the company, and I talked to Woody —I am talking about Kreiger again—I talked to him about it a couple of times, and so I asked Archer then to write a letter to the company so

(Testimony of Jack Lane.)

that I could present it to Woody and to his attorney to see if we could get some answer as to whether he was interested in getting in the real estate business or not.

At that time, his prime interest was, of course, the oil business, although he was in other businesses; the oil business was the type of business that he liked the most and [334] spent more time on.

So the letter was written, and we didn't—I don't think we ever got a definite answer. No, I know we didn't get a formal answer of any kind. And so it was our understanding that it was all right with Kreiger if I took an individual interest with Archer, and we both worked on it. We tried to influence a number of friends to put up the $100,000 that would be required to pay the assessment on the approximately 2,500 shares that Archer had acquired by reason of his contacting the various stockholders, and with the $100,000, whoever put up the money, the financier, would keep the stock as security, and that money would go into the company to finance, first, the taxes, and, second, the money that we would need to carry on the sales campaign that Archer had figured out there.

So it went along for several months, and neither one of us had been successful in raising the money. And then Archer came to—I mean we were discussing the situation, and Archer said that neither one of us had raised the money; he still owed the American Pipe the advances that they had made, and he said that on these—we were having some

(Testimony of Jack Lane.)

discussions then about the rejects of the containers of the Chemical Warfare Service job, and by that time Archer had become acquainted with some of our customers who were in the liquefied petroleum gas distribution business. And one thing [335] led to another, and we said, well, that would be a good company to use those containers, to start the L. P. Gas Distribution business. I don't know whether it was his original suggestion or mine, but when we started thinking about it, one activity came to light, another activity came to light, and Archer finally said to me, "Well, with all these operations, maybe you can interest Kreiger into taking over the company for these other activities, and then I will help you sell the property down there, and I will work on a commission basis instead of being a partner in the deal."

So that is when I wrote the letter to the board of directors on November 25th outlining what I had in mind to develop the business for Palos Verdes.

The Clerk: Petitioners' Exhibit 20 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 20.)

Q. (By Mr. Baird): Mr. Lane, I will show you Petitioners' Exhibit 20 for identification and ask you if this is the letter of November 25th——

Mr. Maiden: Just a moment. I am trying to find that letter here. All right. Thank you.

(Testimony of Jack Lane.)

A. Yes, it is. [336]

Q. (By Mr. Baird): This is the letter of November 25th to which you have referred?

A. Correct.

Q. That is a formal letter from you to the board of directors of American Pipe and Steel Corporation? A. Yes.

Q. Now, what was the purpose of that formal action on your part, Mr. Lane?

A. Well, I could see a number of possibilities of the company using—the Palos Verdes Estates, as other lines of business that the American Pipe was in, in addition to putting the company into the real estate business. I felt that the lots down there were valuable, which—they would be valuable over a period of years. And at that time we started to figure out that the—in fact, it wasn't at that time; it was back in May, when I agreed to take a half of it, or I was anxious to take a half of it. I will say that there were 3,500 shares approximately, and Archer had paid $2 a share for the shares he had obtained, making a total of $7,000 if he had received all of the shares in the company. Seven hundred lots at $7,000 looks like $10 a lot to me in anybody's language, and that is the way I was enthusiastic about the price of the lots, I mean, that is the way I became enthusiastic about the price of the lots, and I still tried to show some of our friends the value of having these lots and then [337] selling them under building deals. At that time, the Westchester was getting started.

(Testimony of Jack Lane.)

Q. Where is Westchester?

A. Westchester is about half way between Los Angeles and Palos Verdes. It is almost to the present International Airport. It is about ten miles north of Palos Verdes, I would say, or maybe fifteen miles.

Q. Will you state whether or not that was an area of considerable building?

A. Yes; Fitzburns and Fred Marlowe built, I think, 20,000 homes on it, or 25,000 homes, and that is only a guess, but it could be——

Q. Who was Mr. Fitzburns?

A. He was one of the leading builders around here, and a very good friend of mine.

And in the other direction, over at Long Beach, the Lakewood tract was just starting. They had bought the property from the Montana Land, and I was familiar with that area. And they eventually built about 60,000 homes there, but at that time they were contemplating about five to ten thousand homes.

Q. Now, just one moment. Do I understand it is your estimate that since some time in 1942 or '43 there have been 6,000 homes built at Lakewood?

A. Yes. [338]

Q. Approximately. And Lakewood is how far from Palos Verdes?

A. Oh, about ten miles or twelve miles, something like that. I can show it to you—no, the map is in my brief case. It was in an industrial area, your Honor.

(Testimony of Jack Lane.)

May I see the map that is laying right there on the desk, and I will show him where it is? I think it is an auto club map, isn't it, of the——

Mr. Baird: May we offer this map of this general area in evidence?

The Witness: I just want to show the location.

Mr. Maiden: No objection.

Mr. Baird: I think it is necessary to get it in evidence, anyway. I will offer it as Petitioners' exhibit next in order.

The Court: 21.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 21 and received in evidence.)

The Witness: I have a much better one in that brief case——

Mr. Baird: That is the brief case that has currently, apparently, been lost?

The Witness: Yes. [339]

Q. (By Mr. Baird): I show you Petitioners' Exhibit 21 and ask you if you will point out, for the information of the Court, and will you please take a pencil and mark in some manner or other, by X's or double X's or something where these areas are, so that when we read the transcript we can relate it back?

A. All right, I will do that.

Palos Verdes, we are right now at this "X," which is the Federal Building, and this area is the Palos Verdes.

(Testimony of Jack Lane.)

Q. Will you mark that in some way?

A. It is written there on the map, "Palos Verdes." That is due south, about, oh, I would say, 20 miles; and then the area I was speaking of this morning, in the testimony about the Hollywood Riviera, is right here.

Q. Will you mark that with a double "X"?

A. We will mark that "1" with the circle in it.

Q. All right.

A. Now, the industrial area of the City of Los Angeles goes all around in—it is called—in that general area, like that. And that is a half circle stretching from El Segundo to Long Beach, and that is marked "2" in the circle.

Now, in this area during the period we are talking about, '42, Archer stated to me that there was about 200,000 employees working in this area that I have drawn that half circle, and they were about 10,000 homes short.

Now, the Lakewood area is right on the edge of that [340-9] half circle that I marked "2" and I will mark that "3." Now, I have got to get my glasses. "Lakewood Country Club," it says on the map there. Yes, it has "Lakewood" here.

Q. You are going to mark that as "3"?

A. That is No. 3 in the circle. Now, this is where they bought the Montana Land Company's grazing land and built 60,000 homes on both sides of this boulevard here. Now, the Fitzburns project of Marlowe and Burns was in the area along that same half circle called "4" in this area here. And it is

(Testimony of Jack Lane.)

near the town of Inglewood. It is between Inglewood and the Municipal Airport, along Sepulveda Boulevard. Between these two areas, there have been many, many homes built, but the largest projects, I believe, in the county were the Lakewood and the Westchester, although there have been many homes built in these areas here.

While we are looking at this map, the map shows where what we call view properties are located on the map, which I am referring to view properties, because they are more expensive than properties in flat lands.

So in Palos Verdes it shows the hills, and the next one is over in the Baldwin Hills, which are north, and they are shown on the map. And then the next due north is the Hollywood Hills and Beverly Hills, which is probably the highest-priced land in the whole area.

But from Palos Verdes north we have only those three [350] areas where you have hillside properties, and to the east you have to go clear across the County of Los Angeles into Santa Ana County in order to get hillside property or view property, as we call it in the real estate business.

Q. Just one further question while you have the map out here, which is wholly isolated to what we are now talking about.

Can you locate on that map where your real estate office was in Hawthorne? A. Oh, yes

Q. Will you mark that with a circle and an "H"?

(Testimony of Jack Lane.)

A. Yes. I was trying to see the cross street on this map, but I don't believe it shows it. But I can mark it with an "H."

Q. I suggested you use a circle and an "H."

A. The address of the office was—it is 147– I believe—and Hawthorne Boulevard, but it is between Hawthorne and Torrance. It is on Hawthorne Boulevard.

Q. Wasn't that near Longdale Boulevard?

A. I have forgotten. But we were handling properties at that office. That is why it was opened up, to handle properties in that area. And property sales were so slow that we weren't making overhead, so we closed up the office in about a year. The address is on that license.

We were talking about that branch office—my real [351] estate office was right here.

Q. Were you through with the map, Mr. Lane?

A. I am through with the map. There is an industrial map that I brought which shows the industrial areas that are zoned. It is a lot better than this map. This map shows the streets and the hillside for the hillside properties, but that industrial map will show the locations of the employees and show the relationship of the industrial area in connection with—I mean it will show how the industrial areas of the County of Los Angeles are distributed.

That hasn't changed since that time. It hasn't materially changed since that time.

Q. I don't find the map at the moment, and I

(Testimony of Jack Lane.)

am not going to take the Court's time looking fo it. We will come back to that later when Mr. Hai gets back in here and can locate it for us.

Coming back to Petitioners' Exhibit 20 for iden tification, I will ask you to look at that and refres your recollection and then tell us whether or no that outlines in somewhat general terms the lot that you had, with reference to possible uses tha American Pipe could make out of the Palos Verde Corporation?

A. Yes, this does. And when I started talkin to my partner again about the value of this rea estate down in Palos Verdes, and all of the ad vantages of trying to acquire the [352] property and explained to him what Archer had accom plished in the way of getting the stock at a ver low cost, and it was being offered to us, what w wanted to do was to—also do other things; thing we were doing in the American Pipe, we wanted t divorce those from American Pipe simply becaus we had competition pointing to our customers, say ing we were in competition with our customers.

To illustrate that, the minute that Kreiger joine our organization, our competitors pointed out to th various oil companies that Kreiger was in the oi business, and he was an independent, and we wer in effect competing with the oil companies who wer purchasing our properties. At that time the oil we supply business and the sales to the oil compani were—I mean, accounted for a substantial portio of our business. So we had a contract with the N

(Testimony of Jack Lane.)

tional Tank Company of Tulsa at that time, and they were producing products for the oil fields and oil refineries. And it created quite a problem to get some of these into oil fields where we would take a lease, for instance, in the oil field to use the National Tank products as an illustration of what those products would do for the oil company. We wanted to get some leases, and several times we had gotten serious about taking some leases, and then, with the problem of the oil companies worrying about our competition, we gave them up.

Then we had developed some refinery equipment which [353] we wanted, and in any number of cases we wanted to take a part of a subdivision in order to get the sale of the water pipe and the gas pipe, and all those activities were pointed up to our competitors as us being in competition with them.

Well, in discussing it, it came out that Palos Verdes, it came out that Palos Verdes would be the one solution to that problem, and it would help us pay for the development of products which we couldn't ordinarily do at that time. It looked like we were going to lose $300,000 on the chemical warfare contract, and this pointed out a way to make around $350,000.

All those things together were the arguments that we had to take on Palos Verdes.

Mr. Baird: I would like at this time to offer in evidence the letter of November 25th, Petitioners'

(Testimony of Jack Lane.)

Exhibit 20, which has been marked for identification.

Mr. Sullivan: May I mention that the same letter was once marked Respondent's Exhibit B for identification, and it also now is Petitioners' Exhibit 20 for identification, which is not to become a Respondent's exhibit. So that I suggest the Clerk make a note that Respondent's Exhibit B has not been used.

The Clerk: It was only marked for identification anyway, and I don't use that.

Mr. Baird: We offer the letter in evidence at this [354] time.

The Court: It will be received.

(The document heretofore marked for identification as Petitioners' Exhibit No. 20 was received in evidence.)

Q. (By Mr. Baird): Will you refer to Petitioners' Exhibit 20, and would you take it and, without taking time to read the entire letter, simply indicate the various paragraphs in there, or the various commodities that you thought might be used in the Palos Verdes Company, to the advantage of American Pipe?

A. Well, there are several things in this letter I don't intend to read the letter, but I can give them the meat of them, paragraph by paragraph.

Q. I wish you would.

A. In the first page, it recites that there ar

(Testimony of Jack Lane.)

approximately 700 lots there, on which we have checked into to see the approximate value.

The next paragraph states that there were 11,000 lots originally subdivided in the Palos Verdes Estates, Inc., which indicates that if there are only 700 lots left, it means that there are a lot of people moving into the area at some time or other.

I have learned since that time, speaking of this 11,000 lots, this is what was told to me at the time, and I [355] had no reason to dispute it—but in the last week I have learned that there have been 5,600 or somewhere between 5,600 and 7,000 lots originally sold in the City of Palos Verdes, and this 11,000 refers to the sales of lots in the Palos Verdes Hills, including some other projects that they had, but not to the City of Palos Verdes only, which was the Palos Verdes Estates, Inc.

The next paragraph states that I am a real estate broker, which they knew. Then the activities in which the company would be interested in, in addition to the real estate business, would be in connection with our water pipe and casing business; that is water well casing, not oil well casing, because at that time we made both kinds. We made both kinds up until 1930, and in 1930 the State of California changed the regulations regarding oil well casing, and so from '38 on——

Q. Did you say '38? A. '38, yes.

Q. Did I misunderstand you when you said something about 1930 a moment ago?

A. In 1930, the type of casing that we were

(Testimony of Jack Lane.)

manufacturing at Alhambra was not outlawed, but the regulations were changed so that we didn't manufacture that any more for oil well casing, but we continued to make water well casing, which was a different type of casing.

But in the late '30's, then we had the Republic Steel [356] Act and the Pittsburgh Steel Act. But in 1941, when I took over the company, I went out of the Pittsburgh Steel Act for oil well casing, because it was a losing proposition. But at this time we were in hopes of getting another act on oil well casings, and that is why I wanted to differentiate between the water well and the oil well casing.

But in connection with our water pipe and casing business, we have often lost large sales when competitors had an in with the developer of a subdivision, who could have taken property as part payment for the pipe and casing. That was a prevailing business through some quarters. They would go in and, to get certain contracts, they would take a part payment for the pipe and casing in real estate, and then they would sell their real estate at some later date at a profit, after the real estate had had a development and had people move in, because any of these real estate or any type of promotion, there is a certain group that is in, that goes in and takes the risk on a small amount of money, and then somebody comes in after there is a little activity, and puts up more money, and so forth.

(Testimony of Jack Lane.)

That is the way every one of these later developments have been, and therefore these contractors can make more money than just the straight sale of pipe by putting in, for instance, some of their profit into the development itself; the original developer doesn't have to put up so much [357] cash. The contractor can later sell properties taken for a larger profit.

I hope that is a little clearer than mud.

Two, in connection with our oil well equipment business, we have often seen competitors take leases and also purchase real property outright there, by being in a position to tie in the sale of their oil field equipment with the leasing of their properties to the oil companies.

So we suggested that we do that. And that was a very common practice at that time.

Three, I am not reading all of this, your Honor: "For postwar, Celotex Corporation has approached us informally on the matter of handling the sale and erection of the steel houses which have been designed by the Pierce Foundation in cooperation with the Republic Steel Corporation and the Celotex Corporation."

We had been discussing these steel houses, and I had learned that the Palos Verdes Estates had had contact with a number—I am talking about the officers that were with Palos Verdes back in the '30's—their last contact with these steel house concerns had been a year or two years before this

(Testimony of Jack Lane.)

letter was written, and we thought we could revi
them.

But, also, about a year or so before, in fact,
had been the last time—I think it was the la
time or the [358] next to the last time I had see
Dahlberg prior to the time he answered my ad, wa
that he said that the Pierce Foundation and th
Celotex were jointly going into this steel buildin
campaign. We had asked him to get some informa
tion for us, and the information had died in the fi
because we had no place to promote the buildin
of these steel houses. But of course this wa
brought back to life then.

Now, it could have been two years before;
could check the records, but anyway that refers t
the steel house business.

"Four, in connection with the manufacture o
propane and other liquefied gas containers, we hav
seen various distributors in the East, and partic
larly Ernest Fannin in Arizona, build very lucra
tive businesses by long storage equipment to co
sumers, and thereby controlling the sale of the
liquefied gas. This, as you know, enables the liqu
fied gas distributor to charge from one to thr
cents a gallon more for his product than is charg
by the distributors having uncontrolled outlets, a
when the consumer owns his own storage equi
ment."

This goes on to say that Palos Verdes had 20,0
acres down there of undeveloped land in whi
natural gas lines have not been laid. During t

(Testimony of Jack Lane.)

next ten to fifteen years a good part of this property is likely to be developed and built up. [359]

Those were the main points of business that the company intended to enter into there.

Q. Referring to the last page of that letter, if I remember correctly, Mr. Lane, did you make some reference there to the possibilities of making profit on the sales of the real estate?

A. Yes. This next-to-the-last paragraph says, "I would propose to this board that the area number 3"—and we are referring there to a map—"be sold at public auction over and above taxes to raise sufficient funds to pay off the taxes on the other two areas, and that if such money were not raised in this method, that one of the other areas be sold. However, the contiguous lots should be sold at a private sale rather than at auction."

The purpose of that was to get builders in and put the land in as an investment in it.

This would leave the company with less property, but it would be free and clear of taxes and would enable Palos Verdes to become or to be a factor in the real estate business in Southern California.

Q. In your testimony you made reference to the fact that you had been advised or informed that certain steel manufacturing concerns had shown an interest in building steel houses or houses in which steel was used in the Palos Verdes area. [360]

I will ask you if you have seen this correspond-

(Testimony of Jack Lane.)

ence before, dated February 1, 1937, and if that is an incident about which you are referring?

A. Well, I have just seen this in the last week. But when we went down there the first time I met Haggott, he gave me a map of the area that was marked up with the lots on it that Palos Verdes was supposed to have owned, and at that time he said that they had been dealing with seven or eight companies on steel houses.

This file here is one Mr. Pearson of the Una- built——

Mr. Maiden: If your Honor please, I object to this. I think this should be put in through the testimony of Mr. Haggott. Mr. Haggott is a principal in this case, if your Honor please. He participated with Mr. Archer, as the evidence shows. And if any statements are to be made, what Mr. Haggott told Mr. Lane, or anything of that nature, it should go in by Mr. Haggott. And I object to the questions asked and I object to the answers along that line which have been given, and ask that they be stricken from the record.

Mr. Baird: Mr. Maiden, I show you a letter bearing the date February 1, 1937, on Palos Verdes Estates, Inc., stationery and addressed to Mr. Harry R. Wylie, Palos Verdes Estates, Inc., and ask if you are prepared to agree that this is a letter from the correspondence files of Palos Verdes Estates, Inc.? [361]

Mr. Maiden: I certainly will agree that that appears to be true. I don't know. This letter is signed

(Testimony of Jack Lane.)

by Paul W. Neal. I don't know Mr. Neal and I don't know what his testimony would be if he were presented here in court and subjected to cross-examination.

I do know that I object to you, sir, getting in Mr. Haggott's story in this case indirectly, without presenting him here as a principal in the case for his own testimony.

Mr. Baird: I don't think the matter is of sufficient importance to take up the time of the Court. I was merely corroborating from the files of Palos Verdes——

Mr. Maiden: I don't question the authenticity of that letter; I agree that that must be an authentic letter or you would have not produced it.

Mr. Baird: Well, I appreciate your kindness, Mr. Maiden, and I shall not hesitate to take advantage of it, in view of your statement that it is authentic.

I now offer it in evidence.

Mr. Maiden: I object to it upon the ground that it is not the best evidence.

The Court: It will be received.

Mr. Baird: We offer the letter of February 1, 1937, as Petitioners' Exhibit 22.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 22 and received in evidence.) [362]

Mr. Baird: And the letter of March 9, 1937, as Petitioners' Exhibit 23.

(Testimony of Jack Lane.)

Mr. Maiden: Are you offering something here that I haven't seen?

Mr. Baird: I wouldn't know what you have seen.

Mr. Maiden: You only showed me an original letter there. I haven't seen these other documents. I had no idea that you were going to offer other documents. You are offering something unsigned——

Mr. Baird: Nothing unusual about the office copies of letters of any organization, law office or otherwise, being unsigned.

Mr. Maiden: I understood you were quite exercised about some office letters of Mr. Archer. I have no objection, your Honor. Let them go in.

Mr. Baird: Thank you, Mr. Maiden.

Mr. Sullivan: May we have copies, Mr. Baird?

Mr. Baird: Yes.

The Court: They will be received.

(The documents above referred to were marked for identification as Petitioners' Exhibits Nos. 22 and 23 and received in evidence.)

Mr. Baird: The last exhibit is No. 23, isn't it?

The Clerk: Yes, sir.

Q. (By Mr. Baird): There has been some testimony in this case by Mr. [363] Dahlberg, vice-president of American Pipe and Steel. I want to direct you attention now for a short time to the matter of your coming in contact with Mr. Dahlberg in

(Testimony of Jack Lane.)

December of 1943. I am not sure whether I asked you this morning or not, but I believe I did, that you had known Mr. Dahlberg back in '34 and '35. May I ask you, when did he become associated with American Pipe and Steel during this last tenure of association?

A. I am not sure of the date, but I think it was in the latter part of 1950. But the records are available if you want the date exactly.

Q. I think that is near enough. And he has been continuously since that time? A. Yes.

Q. Now, with reference to a meeting that you had with Mr. Dahlberg in December of 1943, I will ask you if you had had any contact with him in the months immediately preceding this month of December, 1943?

A. The month preceding?

Q. Yes. A. No.

Q. I am referring not merely to one month, but I mean for some extended period of time.

A. Yes, it was quite a while.

Q. Now, Mr. Lane, Mr. Dahlberg has testified that he [364] saw an advertisement in the paper. Will you tell us something about those advertisements? Were you responsible for putting those advertisements in the paper?

A. Yes, I ran the ads in all the papers here, and what we were endeavoring to do was to find a builder who was interested in taking either one or both of the parcels, and Palos Verdes would go in on what we call a building deal. That means where

(Testimony of Jack Lane.)

you have undeveloped property, one man that owns the property can put in the property, and another man can put in the streets; it generally turns out to be a road contractor that puts in the streets, and the curbs and sidewalks or utilities, whatever is necessary; and then a builder comes along and builds the houses. But they arrive at a price from the value of the land, as compared with other values, after the utilities and streets are in. And then the builder accepts those properties on that basis, and the owner of the land and the contractor installing the utilities make a higher profit than they would if he just sold raw land. Because when you sell raw land alone to a builder, he is faced with raising more money to pay for the land or get the landowner to put it into the deal until he gets his money out of selling houses. For that contiguous property, we were endeavoring to find a builder who would take either one or both parcels.

Q. Now, will you tell us, please, about the contact which you had with Mr. Dahlberg in December, 1943? [365]

A. I think the ads started running on December 23rd, and in answer to one of those ads he telephoned, and I told him that we did have the property. He wanted to know where we had gotten it, and how I had come to have the property. He said that he had a man whom he was getting to finance him—I think his name was Robinson—that it looked like the kind of transaction that he would like, and could he go down and see the property.

(Testimony of Jack Lane.)

I drove Dahlberg down there, together with the man Southwell.

Q. And who was Mr. Southwell?

A. Well, I think that is the first time I ever met Mr. Southwell, and he was some partner of Dahlberg's, but I don't know just what his official capacity was with Dahlberg. But he was supposed to have known all about property and housing and all that.

Q. Was he a builder or architect or something of that kind, or do you know?

A. Well, he represented to me as he was experienced in all these different lines, but they were looking at the property for people who they were going to raise the money from and build the houses on it.

Mr. Dahlberg was along, and we drove over the property, and after he saw it, both he and Southwell said, there was several people that they had in mind that may want to [366] finance this, in addition to Robinson. They said Robinson may be able to take one piece, and some partners of Carl Dahlberg's uncle may want to take the other piece.

Q. Who was Carl Dahlberg's uncle?

A. B. G. Dahlberg, the chairman and director of the board of Celotex Corporation.

Of course, we realized there were some restrictions caused by the war that had to be removed or waived, rather than removed, and Dahlberg said, well, with the contacts his uncle had with the people in Washington, that it shouldn't be any problem

(Testimony of Jack Lane.)

to have those restrictions waived on getting—what they call the red line removed, from Sepulveda up to and including the Palos Verdes Hills.

Q. Will you explain what you mean by the "red line"?

A. Well, at that time, there was what they call a limitation order put out by the War Production Board, and I think the order was L-41; I am not certain—which precluded the issuance of priorities or the sale of any materials, critical materials, without a priority for buiiding in any area not approved by the local—I think it is FHA, or one of the departments of government.

Q. War Production Board?

A. Well, I don't know whether it was the War Production Board or the Materials Control Plan or the FHA, but I know the FHA wouldn't finance anything that was what they called [367] outside of the red line, and the red line seemed to be on different maps; it wasn't an official publication. It was referred to more by the people who were—had to do with priorities, and they would outline an area in red which you could have—build materials for certain specified types of building in that area.

Q. Mr. Lane, just to shorten that up, if I may be permitted to ask you a leading question, I think we could clear that up. Isn't it a fact that there were certain restrictions placed upon the Los Angeles area—and no doubt every other area in the country—which marked out geographically areas

(Testimony of Jack Lane.)

which would be suitable for housing for war workers or military personnel, and that priorities or the War Production Board would permit materials to be used in those areas, but would not permit the same materials to be used in some other areas?

Mr. Chase: Mr. Baird, I am going to object.

Mr. Baird: I will withdraw the question. It is obviously leading.

Mr. Chase: I have another objection. I think we should ask the Court's permission to put in the regulations covering this period, and this particular area, because I don't believe the Court can take judicial notice of that.

Mr. Baird: We would join with you in that. We haven't the slightest objection. [368]

Mr. Chase: Then your questioning concerning these regulations will be unnecessary if we put in the regulations themselves.

Mr. Baird: That is not exactly true, because we lose the continuity of the testimony.

The Court: Proceed with your questions.

Q. (By Mr. Baird): Will you proceed now with the negotiations with Mr. Dahlberg? What happened?

First, may I ask where did you meet him and how did you meet him?

A. He telephoned me, and I picked him up some place—I think it was at the—one time at the Chapman Park Hotel, that time or the other time. But I picked him up some place, and Mrs. Dahlberg was

(Testimony of Jack Lane.)

along, and this man Southwell was along. I just remember his name was Skylark Southwell, I guess.

Q. Now, what ultimately developed then between you, representing American Pipe and Steel, and Mr. Dahlberg?

A. Well, we got down to discussion of the restrictions. It was all agreed that there was several types of restrictions. One was the restrictions for building materials to build the houses. The second was a restriction on utilities, such as the gas. There was a very rigid restriction on gas in areas other than the areas that were already then serviced.

In that connection, there was a lot of these houses [369] that were put in for officers' training and defense workers that had to have oil stoves at first and gas—L.P. gas stoves, until later the gas lines could come back and put them in.

The next restriction at Palos Verdes was the restriction placed there by the Homes Association as to the type of people that could own homes there, the restrictions as to the amount of money that must be spent per house in connection with a lot, and the restrictions on the construction; for instance, the tile roofs that were mentioned here yesterday, those were restrictions which I had been told that weren't any problem at all. It could be removed. In fact, since then it has been removed in a number of locations.

There was a restriction for getting copper wire for power, and I mean for electric power. All those restrictions had to be taken into consideration.

(Testimony of Jack Lane.)

And so Dahlberg represented to me that he knew the people that he could get these restrictions waived or get the red line, as I referred to it a while ago, moved over so that the FHA could finance the houses, and he felt there was no doubt that he could get the materials.

Q. Did you enter into any deal with him at that time to sell him some lots in that area?

A. Yes. We sold him 451 lots, and we originally picked out the two areas which were contiguous, and I think [370] they came out to 437 lots, and there was some other lots that he went along with, that the price was $40 apiece. We estimated our price was, I think, $15 or $16 apiece, and that was to be the starter of the development. We thought it would just take him 30 or 60 days. He was to leave right then, that week. And he was to go up and see a man named Johnson he mentioned up at Portland and Seattle, and then he was to see his uncle in Chicago about the regulations, and he was to go on to Baltimore and Washington to get the regulations straightened out. And we thought it was a matter of 30 days or maybe 40 days before it could be announced that here was a big building project going on down there. And it would help our —the sales of the other properties that we had.

Bear in mind, before we made the Dahlberg deal, I had learned, between the time that we had taken over the Palos Verdes—I am talking about American Pipe—had acquired Palos Verdes, which was on December 2, '43, I learned about this gimmick

(Testimony of Jack Lane.)

in the interlocutory decree, that the taxes had to be paid within six months, and that is the reason that we were then willing to accept some kind of a deal which we wouldn't have been if it hadn't have been for that six-months deal. I think it later became eight months.

We felt by pricing the lots reasonably, and yet making a profit on them, it would assist us in getting more money for the other lots, as we hoped to have left. [371]

Q. Now, what if anything did Mr. Dahlberg pay to Palos Verdes for that property, what did he pay down? A. You mean in cash?

Q. Yes, in cash.

A. He didn't pay anything.

Q. In other words, he gave you his promissory note?

A. Yes. He sang me to sleep on a pretty fancy deal, and I accepted it.

Q. Then I believe the testimony of Mr. Dahlberg is, about which I think there is no dispute, that in 1948 you reacquired his interest in whatever lots were left on a contingent arrangement such as is set forth in the agreement of January 28, 1948, which is Petitioners' Exhibit——

Mr. Sullivan: The agreement is 16 between Dahlberg and Lane.

Q. (By Mr. Baird): ——Petitioners' Exhibit 16?

A. Yes, I purchased the property from him at

(Testimony of Jack Lane.)

—the record will state—I think it was January of '48.

Q. It was January, '48?

A. Sort of a contingent agreement that after all expenses had been paid, and everything, he was to get the remainder up to $37,000, and I was to get the profit from $37,000, on above that.

Q. Mr. Lane, I think I got away from the continuity of [372] things and perhaps should have asked you about this before:

You mentioned a moment ago that American Pipe and Steel had acquired the shares of stock of Palos Verdes Estates, Inc., on December 2, 1943. I will ask you if you had given some careful consideration to the property and to the costs of property and to the taxes outstanding and so forth before that transaction occurred?

A. Yes, I had been considering it for six or seven months. I had given it a lot of consideration.

Mr. Baird: May we have this marked for identification?

The Clerk: Petitioners' Exhibit 24 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 24.)

Q. (By Mr. Baird): I show you Petitioners' Exhibit 24 for identification and ask you whether or not this exhibit came from your files and whether you can tell us when that schedule and the data

(Testimony of Jack Lane.)

thereon, including the pencilled figure thereon, was made out?

A. I made that the day we—American Pipe acquired Palos Verdes.

Q. That is, you are now referring to the pencilled figures? [373]

A. The pencilled figures.

Q. And in whose handwriting is the pencil?

A. That was my handwriting.

Q. And will you explain——

A. There is some handwriting on the back that isn't mine.

Q. I didn't mean to offer this.

Now, what does this purport to be, Mr. Lane?

A. This is the inventory of the lots that Palos Verdes owned, showing Mr. Haggott's compilation of taxes per interlocutory judgment, and then it shows the estimated 1943 and '44 taxes, and the total taxes, and the historic cost of those groups of lots. He didn't have them individually here; he has them in groups of different lots.

Mr. Baird: Now, before we go on with that, may I have this marked for identification, also?

The Clerk: Exhibit 25 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 25.)

Q. (By Mr. Baird): Showing you Petitioners Exhibit 25 for identification, I will ask you if this

(Testimony of Jack Lane.)

is a memorandum which you received in connection with Petitioners' Exhibit for identification No. 24?

A. It was attached to this and another group of papers there. This was attached to this sheet. [374]

Q. When you say "this," you mean Petitioners' Exhibit for identification No. 25 was attached to Petitioners' Exhibit for identification No. 24?

A. No. 24, and then there was several other sheets showing the restrictions that were also attached.

Q. I will come to that in a moment. From whom did you receive Petitioners' Exhibit 25 for identification and 24 for identification?

A. This came from Mr. Haggott.

Q. Mr. Ben Haggott? A. That's right.

Q. Are we to understand then that the figures appearing on Petitioners' Exhibit 24 for identification were compiled in Mr. Haggott's office?

A. Yes.

Q. And was forwarded?

A. Forwarded to me by his note here, and that is his handwriting.

Q. This is his handrwriting?

A. In Exhibit No. 25.

Mr. Baird: I don't have a copy of that. We will have photostats made for you.

Q. (By Mr. Baird): Mr. Maiden makes inquiry as to the date, if you know, when this came to you? [374-A]

A. I received that on December 2, '43. That is

(Testimony of Jack Lane.)

the day I sat down and wrote these lots here as soon as I got it.

Q. I will ask you whether or not—isn't it possible you might have received it prior to December 2, '43, and that your calculations were made on that date?

A. I doubt it very much, because prior to that time the only thing I was interested in, I mean particularly interested in, was the land that they had, and the total taxes that they had against the land. I wasn't particularly interested in a breakdown of any kind. I went over the map and made the breakdown.

Q. Let me ask you this: Petitioners' Exhibit for identification No. 24 bears the date December 2, 1943, and then there is some writing which we will come to later. In whose handwriting?

A. That is my handwriting.

Q. That is in your handwriting?

A. Yes.

Q. So on December 2, '43, you would say then that you put this handwriting and did this calculation on the exhibit? A. That's right.

Mr. Baird: We would like to offer these in evidence.

Mr. Chase: Are you offering the handwritten portion, too? [375]

Mr. Baird: Yes, we are.

Mr. Chase: Everything on the exhibit?

Mr. Baird: Everything, certainly. We are offer-

(Testimony of Jack Lane.)

ing it as a contemporaneous record made at the time in connection with this transaction.

The Court: 25 and 26?

Mr. Baird: 24 and 25.

The Court: They are received.

(The documents heretofore marked for identification as Petitioners' Exhibits Nos. 24 and 25 were received in evidence.)

Mr. Maiden: If your Honor please, I wonder if we might have a moment's recess?

The Court: Yes.

(Recess.)

The Court: You may continue.

The Clerk: Petitioners' Exhibit 26 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 26.)

Q. (By Mr. Baird): I show you Petitioners' Exhibit 26 for identification and ask you if this exhibit, consisting of 12 pages, was attached to Exhibits 24 and 25, which you received from Mr. Ben Haggott? [376] A. Correct.

Q. And what does this represent, Petitioners' Exhibit 26 for identification?

A. Well, this is a list of lots in Palos Verdes that shows each lot and block and tract number, and then it shows the zone—in which the restriction zone under the Homes Association—for in-

(Testimony of Jack Lane.)

sistance, the "A" zones mean single residences, and "B" zones indicate multiple residences with separate entrance. "C" is unlimited multiple zones, which I imagine it is like an apartment house, one or two-story apartment houses. And then zones "D," "E," and "F" mean standard business. And then the next column, after the zones, is the building restrictions for each lot shown on this list.

Q. Now, in whose handwriting do we find the symbols A, B, C, D, E and F in the right-hand corner?

A. I think that is mine. It is not handwriting; it is scribbling or something.

Q. I didn't hear your answer because Mr. Hair was up here.

A. I said I think that is mine. It looks like my scribbling. It is not an endeavor to write anything; it is just a scribbling note.

Q. You don't know whether or not that was on the document when you got it from Mr. Haggott?

A. Yes, I know it was not on it because I can recognize [377] the writing on it.

Mr. Baird: Mr. Chase, we would like to offer this in evidence, if we may.

Mr. Chase: I have no objection.

The Court: Received.

(The document heretofore marked for identification as Petitioners' Exhibit No. 26 was received in evidence.)

Q. (By Mr. Baird): I notice that at the ex-

(Testimony of Jack Lane.)

treme right-hand column under the heading "Building Restrictions," does that refer to dollars or——

A. It refers to dollars, that's correct.

Q. In other words, in the first three lines, we have Zone A, in that particular lot, Tract 7143, Block 6325, Lot 1, Zone A, $5,000, and then Lots 2 and 3, $4,000. Does that indicate that the building restriction was $5,000 for Lot 1 and for 2 and 3 it was $4,000? A. Yes.

Q. The next has $3,500. Does that indicate a $3,500 restriction? A. Yes.

Q. Will you explain to us, please, just what that restriction is, what is required?

A. That is the building restriction of the amount of [378] money that must be spent for a house to be built on that property.

Q. And that restriction is composed by whom?

A. The Palos Verdes Homes Association.

Q. That term has been mentioned several times in the course of the testimony. Will you, for the information of the Court, explain if you know what the Palos Verdes Homes Association is, what its connection with Palos Verdes Estates, Inc., is?

A. I don't know its connection with the Palos Verdes Estates, Inc. All I am informed is that, before you can build a house down there, you must have your plans approved by the Palos Verdes Homes Association or what they call the Art Jury, which I understand is a part of the Homes Association. I am not——

(Testimony of Jack Lane.)

Q. Is it in the nature of an improvement district? A. I don't know. I don't know.

Mr. Sullivan: We have no copy of No. 26. Will you make a note?

Mr. Baird: Yes. I will say to government counsel that, if you will give me a list of the exhibits that we put in and as to which we have not supplied you copies, we will give you copies or photostats.

Mr. Sullivan: Thank you.

The Witness: Pardon me. In answer to your last [379] question or the question before, my understanding of the Homes Association is that they have the right to assess taxes and that they also have the right to impose certain restrictions as they go through—I mean impose certain restrictions on building, and that each lot owner has one vote for the board of directors, and for anything that comes to the—let's see—comes to the public or the people who own lots there, any matter that they have to act upon. But I have never gone to any of their meetings, and I am not familiar with their bylaws or anything of that kind.

Q. (By Mr. Baird): In order to summarize, isn't the Homes Association an association of property owners in that area?

A. Yes, yes, that is true, because each one, each lot owner has one vote. The owner of each lot has a vote for each lot. In other words, we have 700 votes down there.

Q. You have testified that the zones marked C, D, E and F—rather, D, E and F, relate to business

(Testimony of Jack Lane.)

lots, and I call your attention to the fact that on page 11, for example, we find zone B appearing several times, and C-1 appearing several times with the building restrictions of $30,000 and $10,000. Those restrictions in the large amounts relate to business buildings, and not to residences?

A. Correct.

Q. Mr. Lane, showing you Petitioners' Exhibit 24, which [380] is the one which you have identified as containing in your handwriting certain calculations that you made, I want to ask you now to explain what those calculations are and what conclusions you reached by reason of those calculations.

A. Just trying to figure out where to start here. When I received this tabulation from Mr. Haggott, I immediately counted the lots in each area number that he showed on the left-hand side of the page in order to make an appraisal of the value of the lots and what we were going to do with them, what we intended to do with them. And in connection with this I used one of our maps that we had cut up. I think he sent me either one or two maps with this, and I used the maps to see the location of these, and the size of the lots to indicate how we should value the different lots and the different areas in respect to the approximate values that I had received from other people in talking with people as to possible values, if, as, and when the restrictions on building had been overcome.

Q. Now, directing your attention to the lower

(Testimony of Jack Lane.)

part of the page, I notice at the lower left-hand corner there is the figure 300,000 and opposite that, "value on acreage basis only, about a thousand per acre, approximately 300 acres."

A. 300 acres?

Q. Yes. Then below that, immediately below that, we have 150,000 lots—no—— [381]

A. What happened there, I can see what happened. After arriving at these lots, we made a tabulation of the lots—there is one with a little circle around it; those figure about 241 of one class of lots, which I had been exprienced in from looking at the map. They represent one class of lots.

And then, in the other groups, there is 442 of another class of lots. And I was trying to arrive at the value there to show my partner Kreiger on how we arrived at the 350. He was wanting to know how you could get $350,000 out of it. So on the first—going on down below the typewriting of the lines there, where it is written in pencil, "value on acreage basis only about $1,000 per acre," I am trying to arrive at—if we'd sell it at an acreage basis.

Now, in one or two areas up there, when I first went down to Palos Verdes, they were growing beans on the property, and I was informed at that time that the bean crop belonged or was being collected by the Palos Verdes Homes Association to apply against accrued taxes of the Association.

And so that is why I was intere ted in looking at it on a per-acreage basis.

I had received that information from other people

(Testimony of Jack Lane.)

on the telephone, to find out just what the land would be worth on an acreage basis and on a lot basis. So, without drawing lines between the first two pencil lines, which we are talking about two different things there—in fact, it looks [382] like we are talking about three—yes, yes, we are. There are three separate groups in those lines. One is the value on the acreage basis, which is only about a thousand dollars per acre. There is approximately 300 acres involved, I was informed.

So the second classification, lots should bring on a building deal about $1,500 each, where streets and utilities are in. And then I have set out in there in parentheses approximately 100 lots with streets and utilities, and under that there were approximately 580 lots without—of course, the word "lot" isn't written in there.

The third classification is where the streets and utilities were not in, and I was just writing here a figure on $750 per lot, so that 750 is multiplied by 500 lots, which is roughly 500 of the 580 shown just opposite that—totals 37,500——

Q. Wait a minute.

A. $375,000—pardon me. 500 lots at $750 total $375,000.

Q. Then, looking just to the left, I see "figure 80 lots at 400." So multiplied 80 lots by 400; I guess that is thirty-two thousand there.

The second classification—go back to that a minute—there is 100 lots at $1,500 each, and that figures out $150,000. So the total of classifications 2 and 3

(Testimony of Jack Lane.)

I have [383] been talking about here, in the second and third classifications, total 550,000.

Over on the right-hand side of the page, I have written here a recap, and I show the $550,000 that was taken from the left-hand side of the page, and that is called sales. And then I took the taxes from the column that says "Total Taxes," of 97,406, and I have added to that $5,700 which is the $4,685 that he said is to be added for the Palos Verdes Homes Association, plus penalties.

And then we just estimated the penalties at $1,000, bringing it to $5,785. I just used $5,700 for round figures. That brought the total taxes up to $103,000. And we wanted to add a couple or three more years' taxes on it, to—maybe before all the property was sold, you know, so we wanted to be on the safe side is what—in analyzing it for myself, I didn't want to underestimate my figures there. So, deducting the taxes of one twenty-five, I mean just took taxes, round figures of one twenty-five, and deducted those from the 550,000, leaves a balance of $425,000, and then I figured sales expense at $75,000. Ordinarily, I would figure the sales expense at 10 per cent plus, between 5, 6, or 7 per cent for advertising and office, things of that kind. Ten per cent of 550 would be 55,000.

So I think what I have done there is just taken the 10 per cent plus a flat 20,000 to get the 75. Then it says [384] "$350,000 should clear."

Then I put under that "Our cost approximately $12,000," and on the top I asked Woody Kreiger.

(Testimony of Jack Lane.)

my partner, to note this and return. And I say there, "This is how we are figuring the profit on the lots."

Q. Now, Mr. Lane, was this calculation which you have described made on or about December 2, 1943, the day that you finally acquired the stock of Palos Verdes? A. Yes.

Q. Will you state whether or not, if you remember, did you have any conversation with your business associate, Mr. Kreiger, about this at this time?

A. Well, directly after that time we had a number of conversations about the property Then we had other conversations.

Q. Do you remember whether or not you discussed those figures and these calculations which you had made with Mr. Kreiger?

A. Yes, I remember of discussing it, but I don't remember exactly the time and the place.

Q. Now, Mr. Lane, I want to go back to the war contract and discuss with you some correspondence about the termination of that war contract, which I would have taken up with you immediately after the noon recess, but Mr. Hair was not here and I could not locate it. So we went on to something else. [385]

I show you a letter dated September 29, 1943, addressed to the American Pipe and Steel Corporation at Alhambra, on the letterhead of the War Department, San Francisco Chemical Warfare Procurement District, and ask you if that letter, together with the enclosure attached, was received by you in the ordinary course of mail from the War Department at that time.

(Testimony of Jack Lane.)

A. Yes, sir. This is a copy of the original letter though, isn't it? No. This is the letter of transmittal.

The Court: What is your answer?

The Witness: I thought the bottom letter was a copy of the top letter, but the bottom letter, which is a tissue, is the notice of termination of the contract; and the top letter, which is on the letterhead, is the letter of transmittal of the letter of termination.

Mr. Baird: May we have this marked for identification?

The Clerk: Petitioners' Exhibit 27 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 27.)

Mr. Baird: May the record show that Petitioners' Exhibit 27 for identification consists of a letter dated September 29, 1943, to American Pipe from J. W. Lyon, Colonel, Chemical Warfare Service, Contracting Officer, on War Department [386] stationery, San Francisco Chemical Warfare, and an enclosure of the same date from the same Colonel of the War Department. I do not have a copy. That is merely a notice, transmittal letter and notice of termination of the war contract.

Q. (By Mr. Baird): I will ask you if this Petitioners' proposed Exhibit 27 is the official notice that you received from the Chemical Warfare Service in San Francisco of the termination of your contract? A. Yes, sir.

Q. Was that the first official notice that you had

(Testimony of Jack Lane.)

received, first notification that you had received that your contract was to be terminated?

A. No. I received some type of—what would you call it—rumor or something about, I think it was about a week before, or several days before, because I remember we just had an inkling of it just before this was actually received, but this was the first official notice, and this was the, oh, I wish I had the word——

Q. This is the confirmation?

A. It wasn't a confirmation, because the rest was just scuttlebutt, what I knew before.

Q. Well, at any rate, on September 29, 1943, you did receive notice from the War Department that your contract would be terminated effective on October 1, 1943? [387] A. Yes, sir.

Mr. Baird: I don't recall whether I have offered this.

The Clerk: No, you haven't.

Mr. Baird: I offer this, Mr. Chase.

Mr. Chase: No objection.

The Court: Received.

The Clerk: 27.

(The document heretofore marked for identification as Petitioner's Exhibit No. 27 was received in evidence.)

Q. (By Mr. Baird): Is there any explanation or comment that you care to make about that exhibit before I come to the next?

A. It was quite a surprise to us when we received

(Testimony of Jack Lane.)

it, because the scuttlebutt, as I called it a few moments ago, indicated that our contract was to be terminated, but that we were to be given another type of container which we had been requested to submit some information on approximately, oh, a month or some time before; whether it was 30 to 45 days before, or just a couple weeks, I have forgotten. But I think this container was the type "D" well, if I remember right, and the type "E" was the one that I thought that they had a requirement for. When the information came to me through a roundabout source that this contract would be terminated, I [388] didn't pay very much attention to it, because I was thinking—I thought we would have a quantity of the type "E" to build. But this termination came at a time where it was quite disappointing, I will say that, because it leaves with us quite a hole in the volume of business that we had.

Mr. Baird: May we have these letters marked for identification? The letter of October 14, 1943.

The Clerk: Petitioner's Exhibit 28 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 28.)

Mr. Baird: A letter of February 11, 1944.

The Clerk: Petitioners' Exhibit 29 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 29.)

(Testimony of Jack Lane.)

Mr. Baird: And a letter of January 28, 1944?

The Clerk: Petitioners' Exhibit 30 marked for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 30.)

Q. (By Mr. Baird): Can you identify these letters, Petitioners' Exhibits 28, 29 and 30 for identification, as being correspondence from your file relating to the cancellation of your Chemical Warfare [389] Service contract?

A. Yes. This is a copy, yes.

Q. You do identify those as being correspondence from your file? A. Yes.

Q. In regard to this matter? A. Correct.

Q. Now, referring to Petitioners' Exhibit 28, I will ask you what that is? That appears to be a letter from you or a copy of a letter from you, as president of American Pipe and Steel Corporation, to the Commanding Officer, San Francisco Chemical Warfare Procurement District, dated October 14, 1943.

Is that a copy of a letter that you transmitted in regard to the cancellation of your contract?

A. Yes, sir.

Q. Just briefly, what were you proposing to do or what were you attempting to accomplish by that communication?

A. I was endeavoring to get some action on our termination claim, and I was expressing to them the

(Testimony of Jack Lane.)

critical situation we were in financially, which was a result of the termination of the contract.

Mr. Chase: Mr. Baird, shouldn't you allow us to see that before he testifies any further?

Mr. Baird: Excuse me, Mr. Chase. I think your objection is well taken. [390]

Mr. Chase: We have no objection, if you want to introduce this in evidence.

Mr. Baird: Thank you. We offer it in evidence. That is Petitioners' Exhibit 28.

The Court: It will be received..

(The document heretofore marked for identification as Petitioners' Exhibit No. 28 was received in evidence.)

Q. (By Mr. Baird): Now, Mr. Lane, upon receipt of this notice of cancellation of your contract, did you make any calculations or have any determination made as to what profit or loss would be on your contract in the year 1943?

A. No, I don't recall that I did myself. I handled the negotiations with the Federal Reserve Bank and the Chemical Warfare Service and their various representatives, and our accounting department gave us certain figures and made up exhibits to go with the claim on showing what the costs were. But, as I said a while ago, the figures on those exhibits were subject to quite a bit of negotiation because of the way the accounting methods were set up; there was quite a bit of discussion on what the costs were

(Testimony of Jack Lane.)

of various uncompleted components and completed components and uncompleted tanks.

Q. Mr. Lane, upon receipt of this notice, did you have in your own mind any opinion as to whether or not you were [391] going to suffer a substantial loss by reason of the cancellation of that contract, or did you reach the conclusion that you could still make a substantial profit?

A. No. On the receipt of the termination, the first thing we did was ask the Chemical Warfare how we would come out under it, because in those days I knew nothing about terminations because, in the first place, we hadn't had any; in the second place, there weren't as many terminations then. It wasn't as common knowledge and we hadn't had termination regulations.

But going into it with the Chemical Warfare, they said that we should come out—they wouldn't permit us to make a profit on the uncompleted items, and I think they knew very little about it at the time, of how the termination would be handled. It was something new to them. And at that particular time, and for a week or two later, it looked as though we would come out with our costs, and that is about all, and we wouldn't suffer a big loss or a profit. But then after we got to going into it, and we went over the claims, some of our claims, after the claims had been presented, then it began to be a very serious situation, because different remarks people with the Chemical Warfare Service made indicated that, out of the claim of $1,200,000, they were only going to

(Testimony of Jack Lane.)

allow $600,000, which would make a $600,000 difference, and then later on we found them readjusting the claim in discussions; [393*] under that settlement we would lose between $300,000 and $450,000—we didn't know just exactly, because we hadn't had our costs set up in such a way that we knew what our true cost was.

The Court: Is that out-of-pocket expense you were figuring, or gross——

The Witness: This was out-of-pocket, because it was complicated in this way: We borrowed some money from the bank. I think we had a banking credit set up for about a million two hundred thousand dollars, and the banking credit was about used up, and that was the purpose.

The Court: Used for financing the production?

The Witness: For the production, yes.

The Court: For the plant?

The Witness: For the erection of the plant, that's right. We dealt with two banks, and that is why I am trying to think clearly here what happened. The first bank was the California Bank; then after we had received the contract or the notice that we were going to get a contract, and to have the bank write the Chemical Warfare a letter that we

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*Clerk's Memo: No page numbered 392—error of reporter in numbering.

HOWARD P. LOCKE,
Clerk.

(Testimony of Jack Lane.)

were assured of the financing, that was for $800,000 from the California Bank.

Then when we received this word from Chemical Warfare that they wanted the notification from the bank that our financing was in order, we then learned that they had a partner [394] which we knew nothing about it before, which was the Security-First National Bank.

So then the Security dillydallied along on it, and I went over to the Bank of America, and they went through the costs and they included then the building, which the line of credit was set up for $1,250,000 with the Federal Reserve.

The Court: I don't believe it is necessary to go into all this, unless Mr. Baird wants to.

Mr. Baird: No, I don't think so. But I do want to direct the witness' attention to at least two paragraphs in the letter of October 14, 1943, and ask if he can elaborate on what is meant by these paragraphs.

These paragraphs read, "To speed the action on our claim, we will submit our figures as quickly as each schedule is completed, rather than holding them until all figures are complete. We are therefore enclosing Exhibit 1, Schedules A and B, which cover the inventory of raw materials and purchased parts at the time of termination September 30, 1943."

Now, the next paragraph is the one that is important, about which I want to have whatever explanation there is:

"Total amount of our investment in the contract

(Testimony of Jack Lane.)

is $1,289,550.59 subject to audit adjustments. The amount of our V loan with the Federal Reserve Bank is $1,020,070.82. Of this latter figure the bank has allocated $99,490.54 as being funds borrowed to carry on our operations other [395] than the container contract. This leaves us with an actual cash investment in the contract over and above borrowed funds allocated to the contract in the amount of $308,970.31."

Q. (By Mr. Baird): Do those figures and does that letter refresh your recollection now as to whether you then thought you were going to sustain a loss on this transaction by reason of the heavy investment that had been made in the plant equipment building and so forth?

A. Yes. This was October 14th, but, as I understood your question a while ago, the termination was received on September 29th, and as of that date, we didn't think we would get a loss, but that one paragraph you read here is merely saying that, instead of waiting for the entire claim to be settled, we wanted to feed this information to them as rapidly as possible, so that they could come up with some sort of relief, because we were frozen.

The next paragraph, number 3, reads, "The above-mentioned investment has depleted our working capital inventories that could be warehoused, and all accounts receivable have been assigned to the banks under requirements of the V loan."

Paragraph 4 says, "The cancellation of the contract therefore leaves us without any funds to op-

(Testimony of Jack Lane.)

erate. We have a [396] substantial backlog of war work."

Now, in those days, "substantial"—I am just going to remark about that paragraph—in those days, "substantial" to us meant in comparison to the kind of work we had had in the past.

Number 5 says, "It is requested that the War Department direct the Federal Reserve Bank to release the accounts receivable which we have pledged under the loan."

"This refers only to those accounts receivable for others than the Chemical Warfare Service. That happens to be roughly $100,000. This will permit us to use the accounts receivable for operating capital until such time as our claim with the War Department has been paid."

The sixth paragraph says, "This is urgent"——

The Court: That is enough.

Mr. Baird: May we have this marked for identification?

The Clerk: 31.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 31.)

Q. (By Mr. Baird): Mr. Lane, will you examine Petitioners' Exhibit 31 for identification and refresh your recollection on that, and I will ask you to state if that is a compilation made with reference to government contracts which you had as of [397] the calendar year 1943? A. Yes, sir.

(Testimony of Jack Lane.)

Q. I want to confine your testimony at the moment to the year 1943, and I am removing the back page of that, so that this exhibit relates only to the year 1943.

The Court: That is 31?

Mr. Baird: Exhibit 31, yes.

Q. (By Mr. Baird): Now, you have identified this as being a schedule of your government contracts for that year.

Mr. Baird: And we now offer that in evidence.

Mr. Chase: I don't understand this. This doesn't make any reference to this Chemical Warfare Service contract; this doesn't purport to be a complete schedule, does it?

Mr. Baird: I am not sure.

The Witness: It is a complete schedule of all of the contracts that were in effect during that year.

Mr. Chase: There is nothing on here about the Chemical Warfare contract.

The Witness: Pardon me—except that one, Chemical Warfare; that is the only exception. The reason——

Mr. Baird: Just a moment. May Mr. Hair make an explanation of this?

Mr. Hair: If you will look at the top of the first page, the extreme left column, you see that that is a list of [398] the contracts awarded in 1943. It doesn't include the Chemical Warfare contract because it was awarded in 1942.

Mr. Chase: I see.

(Testimony of Jack Lane.)

The Court: Any objection, Mr. Chase?

Mr. Chase: Well, your Honor, no, I have no objection.

The Court: It will be received.

(The document heretofore marked for identification as Petitioners' Exhibit No. 31 was received in evidence.)

Q. (By Mr. Baird) Referring now to the last page, that is page 4 of Exhibit 31, I will ask you what your backlog of Federal government contracts was on December 31, 1943? A. $850.

Q. Now, with reference to the fact that this exhibit relates to contracts awarded in 1943, did you have any other contracts then in existence on December 31, 1943, that had been awarded to you prior to the beginning of 1943?

A. No, sir, not to my knowledge.

Q. So that when we come down to the end of the year 1943, you were without any contracts with the Federal government for war material of any kind?

A. Except this $850.

Q. That's right, except the $850. That is the amount [399] set forth on page 4? A. Yes.

Mr. Baird: We offer that in evidence. Oh, I believe it is already offered.

Just one moment, your Honor, I think we may about be through.

May it please the Court, there are many minutes of the minute book of Palos Verdes and some of American Pipe and Steel which we will want to offer

(Testimony of Jack Lane.)

in evidence. We have conferred with government counsel on that, and we feel that we will have no difficulty in agreeing about the authenticity of the minutes, and, rather than take the time of the Court, while Mr. Lane is on the stand, to go through the process of identifying them, we will forego that if it may be understood that we can offer them later at whatever time happens to be convenient. I just want to make that statement to the Court.

Is that agreeable?

Mr. Chase: That would be agreeable with Respondent.

The Court: Have you finished?

Mr. Baird: No, I have one more subject that I want to talk to him about.

May I ask the government counsel, do you have the photostats of the income tax returns that you propose to offer?

Mr. Chase: I hope to have those tomorrow. I haven't [400] been able to get to the office today to get them. But I think we can have them the first thing tomorrow morning.

Mr. Baird: Very well. Will you have copies available for us?

Mr. Chase: Certainly. There are sufficient copies of all of them.

Q. (By Mr. Baird): There is one phase of this activity about which I have not made inquiry, and that is the sale of some lots in 1944 by Palos Verdes after American Pipe and Steel had acquired the stock.

(Testimony of Jack Lane.)

Will you tell us briefly what tha situation was and what prompted you to enter into that sale in the manner in which you did?

A. Do we have the map? I am referring to the map there.

Q. We have the map.

A. It is going to be hard to discuss it without the map. There was one map entered in evidence, and I have forgotten——

Q. Not the auction map.

A. No, the auction map wasn't entered.

Mr. Baird: Mr. Chase, we would like to offer this map, a copy of which has been referred to.

Mr. Chase: No objection [401]

Mr. Baird: Petitioners' Exhibit next in order.

The Court: Exhibit 32 in evidence.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 32 and received in evidence.)

Q. (By Mr. Baird): Mr. Lane, I show you Petitioners' Exhibit 32.

It may be that the Court would like to——

Mr. Sullivan: Would the Court like to borrow our copy?

The Court: I can see it. Thank you.

Q. (By Mr. Baird): Now, first, Mr. Lane, I will ask you for the record what is this Exhibit 32?

A. This is the map that was sent out to the prospective purchasers of lots in answer to many

(Testimony of Jack Lane.)

ads. I have forgotten how many there were. We have samples here of probably 45 or 50 of them.

Q. Are they similar to the two ads that have been introduced here as Exhibits 9 and 10?

A. No, sir, they have no connection with those ads at all.

Q. Very well. You have answered the question. We will get the others. Go ahead.

A. Mr. Bedilion, the auctioneer—— [402]

Q. Will you spell that, please?

A. Dean Bedilion, B-e-d-i-l-i-o-n. He is an exclusively real estate auctioneer. He doesn't handle any other type of auctions. And he is one of the most outstanding auctioneers here; in fact, I think he is the ony big one that handles real estate. And he is a man that is well known, been well known for years, of his ability to judge the market.

And so we had a conference with him on the sale of these lots.

Now, on the other exhibit that we have in Court here—whenever I say "we," I am talking of Palos Verdes Estates, Inc., they had—may I have the exhibit, please, the one with the blue backing on it?

Thank you.

In the area known as Montemalaga, in that area, the Palos Verdes Estates owned 311 lots in here that isn't shown in color.

Q. Just a minute. You will have to mark that on this exhibit somewhere.

A. It is marked on the exhibit. It is in Tract

(Testimony of Jack Lane.)

Q. Tract 7538?

A. Yes. And those were 311 contiguous lots, and represented about, approximately, 115 acres.

In Tract 7144, which is known in Palos Verdes as the Lunada section, they had 126 lots that do not show colored [403] on this map; shown in black.

The Court: Are the black ones shown here the ones that were offered for sale?

The Witness: Yes, those were offered for sale, plus 28 other lots that were not originally intended to be offered, but at the time of the auction there were bidders there that wanted to have those lots put up for sale. And some of those lots had been deeded to Dahlberg, so I got his permission to sell those at, I think, about double what they agreed to pay for them.

We understood at the auction from the auctioneer that he could sell those to people who were requesting to buy them for around $100 apiece over and above the taxes, and Dahlberg had paid $40 apiece for them, so he said he would be doubling the money, and it would also help to show that there were some lots moving.

All of the ones that were shown in black were sold at the auction or were lost through the taxes that were assessed against the land under that interlocutory judgment, plus the 28 other lots that I have tried to explain.

Now, to go back to Mr. Bedilion, he felt that he could get between $100 and $200 per lot over and

(Testimony of Jack Lane.)

above the taxes if he put on the right type of sale and did sufficient advertising on it.

The Court: How much did the taxes amount to per lot? [404]

The Witness: An average would be—there was 90,000 for 700 lots so—wait a minute, 100,000 for 700 lots, because these other taxes were included. So it would be a hundred—I am not very good at figures—$150, between $100 and $150 a lot. We have a list some place of the individual lots and the taxes against them, and they run anywhere from $25 a lot on up to $250, I think it is.

The Court: Total taxes?

The Witness: Total taxes were $97,406.39.

Q. (By Mr. Baird): Mr. Lane, may I interrupt just for one moment so that we will not be misled. The taxes on some of the business lots, were they more or less than the taxes on the residential lots?

A. Well, yes. There was a higher appraisal on the business lots, and that was one of our intentions, to get those taxes and assessments reduced.

To explain what he is mentioning about the business lots, I might——

Mr. Baird: May I call the Court's attention to the fact that the interlocutory degree of the Superior Court in the action brought by Palos Verdes against the State of California and other political subdivisions makes a list of the lots and the taxes that were delinquent against each lot, so that is in the record. [405]

I must correct my statement, because of the fact

(Testimony of Jack Lane.)

that—with agreement of government counsel—in order to save pages and pages of exhibits, we eliminated a description of the lots and also the taxes then due and payable on that. But the interlocutory decree in its complete form does set those taxes forth.

Mr. Hair: If I may interrupt, I am a little more familiar with this interlocutory decree than Mr. Baird. This decree sets forth the list of these lots, 695 of them, three different times in the course of the decree, and in the beginning, on page 50, and running over on page 72, 23 pages of those lots listed vividly from 1 to 695 with the amount of the tax opposite each lot, and those run, as Mr. Lane says—here is one, $26.67. Many of them run around $150 to $200. I believe there are a few large business lots on which the taxes ran as high as $1,000, $1,100. There are many, many lots on which the taxes were $50, $60, $90.

The Court: Very well. Proceed.

The Witness: Now, to explain this auction, the area which is called Valmonte, and in the area called Malaga Cove, and the area called Margate, were distributed about 241 lots, which had either utilities and streets or streets without utilities, and those of course were to build up the ultimate price, and a lot of the prospective purchasers, they were interested in those lots because there was building all around [406] them, and they were close to the building district and they were close to the golf club. This property has a very fine golf club on it.

(Testimony of Jack Lane.)

It has a business district here that is a beautiful, unusual type of business district. And because those were close, particularly Malaga Cove and Valmonte were close to those areas, and close to the fire department and everything, those were more choice lots, and Bedilion seemed to feel those would bring considerably higher prices.

So we gave him rather a free hand on the advertising. I don't remember how much money was spent, but it was about twice as much as would be spent ordinarily for this type of auction. It was advertised in many papers throughout the Valley. I am talking of the San Joaquin Valley, and the ones down in the Imperial Valley, and very widely through the defense plants in this area within oh, ten miles of the plant. The area I am speaking of is Long Beach, San Pedro, Wilmington, Torrance, Inglewood and Hawthorne. That is the principal areas; that is what you might call contiguous to this property, that had defense workers.

Q. (By Mr. Baird): Mr. Lane, did you realize any profit out of this auction sale?

A. Oh, yes. As I recall, we took in $17,000 the first day, and the second day was $16,000, I think. I have forgotten. But I think—it seems to me we took in $30,000 or [407] $32,000. It is a matter of record.

Q. That is your present recollection of it?

A. Yes. I know we made a profit.

Q. Will you tell us something about the conditions under which that auction was conducted?

(Testimony of Jack Lane.)

A. You mean the climatic conditions?

Q. Yes.

A. Raining to beat the band.

Q. Was it necessary for you to conduct the auction in a tent? A. Yes, sir.

Q. Did you have a tent there?

A. We had a tent there.

Q. Was that tent large enough to accommodate several hundred people?

A. Yes. I think they figured either 200-person or 350-person tent. It wasn't raining all the time, but it was muddy. But the people overflowed the tent into the mud on the outside. But I have forgotten what the size of the tent was.

Q. I show you an advertisement that appears in the Redondo Beach Daily Breeze of the date of Friday, January 14, 1944, and ask you if that is the type of advertising to which you have referred in regard to this auction that was held on January 14? [408] A. Yes, that's right.

Q. And 15th.

Mr. Baird: In order to make our record complete, we would like to offer this in evidence.

The Court: Not as proof of the facts therein stated?

Mr. Baird: Yes, that's right.

No, not as proof. We merely want to offer that to show that that was the general type of advertising that was done in connection with that.

This is on page 2.

Mr. Chase: No objection, your Honor.

(Testimony of Jack Lane.)

Mr. Baird: We have many more, but I think we will not encumber the record with any more than that one page.

Mr. Sullivan: May I have the date of the newspaper?

Mr. Baird: January 14, 1944.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 33 and received in evidence.)

Mr. Baird: If the Court please, if I may suggest it, I would like to ask that we adjourn at this time, which is almost our time. I think I am practically through, and probably am through with Mr. Lane. But I would like to have an opportunity to review our voluminous files and to consult with him between now and tomorrow morning. I think I will dispose [409] of him very quickly in the morning.

The Court: How many more witnesses do you have after Mr. Lane?

Mr. Baird: Well, I think we will finish by tomorrow noon without any question; and probably before then. I would think that we would finish possibly by 10:30. Well, of course, I am overlooking the fact that my friends on the other side of the room will have some cross-examination, so all that I can say to the Court——

The Court: You can't speak for them?

Mr. Baird: No, that's right.

The Court: We will recess until tomorrow morning at 9 o'clock.

(Testimony of Jack Lane.)

(Whereupon, at 4:25 p.m., the hearing was recessed, to reconvene at 9:00 o'clock a.m., Friday, June 4, 1954.) [410]

The Court: You may proceed.

Mr. Baird: If the Court please, we have given a copy of this industrial map of the area including Palos Verdes Estates to counsel for the government and we would like to offer this in evidence if there is no objection.

Mr. Chase: No objection.

The Court: It will be received, No. 34.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 34 and received in evidence.)

Mr. Baird: And if the Court please I have here seven brochures of the American Pipe and Steel Corporation. I have exhibited them to Mr. Chase, counsel for the government, and we would like to also have these in evidence indicating the type of work that they were doing and the character of the products which they manufacture.

The Court: As of this time or as of the taxable year?

Mr. Baird: As of 1942.

The Court: Were they published in 1942?

Mr. Baird: Yes, sir.

Mr. Chase: No objection.

The Court: Petitioners' Exhibit 35 will be received.

(Testimony of Jack Lane.)

(The document above referred to was marked for identification as Petitioners' Exhibit No. 35 and received in evidence.) [414]

Whereupon,

JACK LANE

resumed the stand and testified further as follows:

Direct Examination
(Continued)

By Mr. Baird:

Q. Now, Mr. Lane, I want to talk to you briefly about Exhibit No. 34 which is the industrial map and which has been introduced in evidence. Will you please explain this map briefly to the Court for the purpose of the record?

A. This map is a commercial publication called "Industrial Areas Los Angeles and Vicinity" prepared by the Los Angeles Chapter of the Society of Industrial Realtors of the National Association of Real Estate Boards and it is distributed through the real estate brokers who handle industrial properties. On this map is shown in mustard color all of the areas that are zoned for industry in Los Angeles County.

Q. When you say "zoned," you mean zoned pursuant to the ordinances of Los Angeles County?

A. Correct. And yesterday when we were testifying about the industrial areas around the Palos Verdes Estates the map that we were looking at then did not show the zone and show the percentage

(Testimony of Jack Lane.)

of industrial areas and industrial plants in comparison with other areas of the county. And this map is being introduced for that purpose. Here in this area I will draw a half circle in ink to show the areas where [115] industrial workers were located at the time that we became interested in Palos Verdes Estates and it was represented to us at that time that 200,000 workers within this half-circle and in later checking it up we found considerably more than 200,000 employees.

At that time, 1943, the Department of Labor did not keep a census or an accurate record of this type of employee but since 1949 or 1950 they have kept such a record and they inform us that there are around 300,000 workers there now. But since some of the shipyards in the Wilmington and Long Beach and San Pedro areas have been shut down this would represent a lesser number of employees than there were during the world war, that is from 1943 to 1945.

There are also—

Mr. Chase: Just a moment. I am going to object to that testimony, if your Honor please. And I will ask that it be stricken. There is no basis that has been laid for Mr. Lane to testify as to what conditions were. I submit that he does not know what happened to those war workers. I do not see the materiality of this question. Can't we shorten it and assume that this is an industrial map and that there were war workers living in this area. I will stipulate to that.

(Testimony of Jack Lane.)

Mr. Baird: I do not think that Mr. Lane has gone too far.

The Court: It would be more desirable to have it in [116] question and answer form.

Mr. Baird: Very well, your Honor.

Q. (By Mr. Baird): Mr. Lane, does this map, Petitioners' Exhibit No. 34, represent the zoning for industrial purposes as it existed in 1942 and 1943 as far as you know?

A. As far as I know, there has been very little change since then. I was just looking to see if there is a date on the map but there doesn't seem to be any.

Q. At the time that you became interested in the Palos Verdes Estates, Inc., you testified that you were advised that there were about 200,000 war workers that had moved into this area that you have indicated on Petitioners' Exhibit 34 by a half-circle that you have drawn in ink?

A. Yes, sir.

Q. And also that there were about 10,000 houses short at that particular time?

A. That is also correct.

Q. Do you know whether or not there has been an increase in the population in that area since 1943 or has there been a decrease?

A. The Department of Labor says that there has been a decrease.

Q. Do you know why that is?

A. Because of the closing down of the shipyards and other large plants. There was, for ex-

(Testimony of Jack Lane.)

ample, an aluminum [417] plant at Torrance that was shut down after the war and then there was another plant, I do not recall the name; I know that United States Steel bought the plant, but I cannot think of the name. But I do know that there was a chemical plant and an aluminum plant and a magnesium plant, I believe, several large plants that were shut down.

Q. And have those war plants, have they been replaced or taken over by other industries?

A. In some instances, there have been other industries to take them over but quite a few, there are quite a few that are vacant now and used only for storage.

Q. Well, do you know whether other industries have moved into this area since 1943?

A. Oh, yes, a lot of industries have moved in.

Q. Do you have anything futher that you want to point out on this exhibit, Mr. Lane?

A. Not unless you want to show on here where the 60,000 houses were built in here.

Q. Yes, will you indicate on this map the Lakewood area in which you have testified that there were approximately 60,000 houses built?

A. Lakewood shows on the map, the town of Lakewood.

Q. Would you mark that with a large "L" with your pen so it can be easily identified?

A. Yes, right here. [418]

Q. During what period of time did that development take place?

(Testimony of Jack Lane.)

A. I believe it started in 1941 or 1942, yes; I think it started in 1942 and was completed about 1948, or I guess—yes, it was 1947 or 1948.

Q. In that particular area? A. Yes.

The Court: When you speak of Los Angeles Harbor, do they refer to Wilmington substantially?

The Witness: Wilmington is officially part of Los Angeles. Now, there is the Harbor, well Long Beach Harbor also comes over here so a lot of people refer to the Los Angeles Harbor as the whole area including Long Beach, Wilmington and San Pedro. But actually the City of Long Beach prefers to designate their city separately.

The Court: Separately?

The Witness: Yes, sir.

The Court: And is San Pedro a separate city?

The Witness: Yes, sir.

The Court: But Wilmington is not?

The Witness: Wilmington and San Pedro, I believe, are part of Los Angeles, but I am not certain about it.

Q. (By Mr. Baird): Let's get it clear on that. I believe that you stated that San Pedro is a separate incorporated municipality? [419]

A. It was at one time, but I think that it is a part of Los Angeles; Wilmington and San Pedro have been incorporated with the City of Los Angeles now, and I think they have been for some years.

Mr. Chase: His information is correct.

Mr. Baird: If you will stipulate to that, I did

(Testimony of Jack Lane.)

not think that was true; but if you say so, it must be.

The Witness: Since this map was drawn, the Harbor breakwater comes in quite a way and I have indicated that also in pen.

Q. (By Mr. Baird): And would you indicate that that is your drawing on the map?

A. Yes, sir.

Q. And Palos Verdes Estates, of course, that shows on the map? A. Yes, sir.

Q. One further question; then I am through with this map. Do you know whether or not the County of Los Angeles and/or the State Highway Commission of the State of California now have in effect any plans for the construction of a freeway from downtown Los Angeles to the Palos Verdes Estates area?

A. Yes, it comes, the freeway enters the east end of the Palos Verdes Hills.

Q. Do you mean that the freeway has already been [420] constructed to that extent?

A. There are two; there is one that comes down Normandy and it enters the east end of it and the other comes directly south to Wilmington and that is not completed.

Q. And is that the so-called Harbor Freeway that is now being constructed?

A. Yes; that is the Harbor Freeway.

Q. And is there anything further about this map that you want to call to the Court's attention?

A. No.

(Testimony of Jack Lane.)

Q. Now, Mr. Lane, I show you this Exhibit No. 35 and I will ask you to explain very briefly to the Court what those seven brochures represent.

Mr. Chase: Mr. Baird, don't they speak for themselves?

Mr. Baird: I think so, certainly.

The Court: I don't believe it is worth our time at this point.

Mr. Baird: I am not particularly interested in it if the Court and counsel are not, so we have it already in the record; that is the important thing.

Yesterday we had marked for identification, Petitioners' Exhibit No. 30; but it was not offered in evidence. I would like to offer that in evidence at this time.

Mr. Chase: No objection. [421]

The Court: It will be admitted as Petitioners' Exhibit No. 30.

(The document heretofore marked for identification as Petitioners' Exhibit No. 30 was received in evidence.)

Q. (By Mr. Baird). Mr. Lane, I show you Petitioners' Exhibit No. 30 and will ask you to refer briefly to that and advise the Court, if you know, what that is and what was the occasion of that letter? A. It is a copy——

Mr. Chase: Just a minute, Mr. Baird, I object: I do not believe that letter was written by Mr. Lane or to Mr. Lane.

Mr. Baird: This is his copy.

(Testimony of Jack Lane.)

Mr. Chase: It may be a copy but I do not believe that he can tell the purpose that he can say that he received it. I have no objection on that ground; but he cannot tell the purpose for which it was mailed.

Mr. Baird: Well, he certainly should be able to tell where it fits into the picture as far as his company is concerned.

Now, the letter itself indicates that this is a copy which was transmitted to him. I mean the letter was written to the Bank of America by the military authorities and [422] a copy sent to Mr. Lane.

Mr. Chase: Wasn't it written by the Bank of America to the military authorities?

Mr. Baird: No, it is the other way, Mr. Chase. This is a letter to the Bank of America, the National Trust & Savings Association, from the War Department, Chemical Warfare Service, San Francisco. I think that he should be entitled to express an opinion as to what the purpose was or necessity of sending him a copy.

Mr. Chase: I do not see that.

The Court: The letter speaks for itself in the first instance.

Mr. Baird: It is true the letter speaks for itself.

Q. (By Mr. Baird): Mr. Lane, did you at this time have considerable correspondence, and had you had some before that time, in January, 1944, over this war service contract?

A. The Chemical Warfare contract; yes, sir.

Q. Now, the Chemical Warfare contract——

(Testimony of Jack Lane.)

Mr. Chase: Mr. Baird, we have the complete Chemical Warfare files with all of his correspondence. I do not want to introduce it but we can, you can examine it if you wish and find out the relationship. I submit that the letter speaks for itself and it is not ambiguous and Mr. Lane couldn't possibly tell why the Army wrote that letter to the Bank of [423] America. It would be hearsay if he tried.

Mr. Baird: Well, we have it in evidence and we will talk about it in our brief.

Q. (By Mr. Baird): Now, Mr. Lane, I do not believe that I asked you yesterday whether or not American Pipe and Steel Corporation carried out its plan of operation of Palos Verdes Estates, Inc., after you acquired control of Palos Verdes Estates, Inc., on December 2, 1943. I want to go into that briefly. I will ask you if you would just briefly state to the Court whether or not you did in the succeeding years after you had acquired Palos Verdes Estates, Inc., carry out the plan that you outlined here, yesterday?

A. American Pipe and Steel—pardon me—I mean Palos Verdes Estates, Inc., did carry out part of the plan that was set forth in the letter of November 25th. They were unable to hold on to all of the land for the length of time that enabled Palos Verdes Estates, Inc., to enter into the development of the sale of lots in that area, however.

Q. May we break this down into its component parts. You testified yesterday that your main ob-

(Testimony of Jack Lane.)

jective or at least one of your main objectives in acquiring Palos Verdes Estates, Inc., was because it had tremendous potential value for real estate purposes. Now, I will ask you whether or not you were able to develop the Palos Verdes Estates, Inc., for real [424] estate purposes after you acquired the stock?

A. That was the main plan that we had to develop it, to develop the sale of the lots of Palos Verdes Estates and add other properties, real estate properties to it. This has already been testified to that some of the lots were sold and some lots were lost under a tax decree, the interlocutory decree on the taxes assessed to the lots. But during the period that I was connected with Palos Verdes Estates, Inc., we did add considerable properties to it. Palos Verdes Estates did buy some houses.

Q. May I interrupt you just a minute and before we come to that, we will get to that in just a moment. You testified in some detail, yesterday, about Exhibit 24 which is the exhibit of your calculations of the possible profits that could be made on Palos Verdes real estate and testified that those calculations were made on or about December 2, 1943.

Now, may I ask you approximately what was the aggregate figure of profit that you then determined could be made out of Palos Verdes Estates, Inc.?

A. $350,000 on a $12,000 investment.

Q. Now, after you acquired the stock of Palos Verdes Estates, Inc., what happened to the real estate; were you able to realize that $350,000?

(Testimony of Jack Lane.)

A. That particular real estate was sold for a total of some $55,000, I believe, the parts that were sold were sold for [425] I think it is $35,000 but the records will show it definitely.

Q. Now, your first sale was to Mr. Dahlberg, was it not? A. Yes; Carl Dahlberg.

Q. And that was for how much?

A. $18,000, plus interest.

Q. And then your next sale was the auction to which you referred, was it not?

A. Correct; that sale took place on January 14th and 15th or 15th and 16th of January, yes; I think it was the 15th and 16th, 1944.

Q. Approximately what did you realize on that?

A. There again the books will show it but I think it was somewhere around $30,000 or a little more.

Q. Now, after the sale in January of 1944—strike that, please. Mr. Lane, was there more than one auction there in January of 1944?

A. No, one auction lasted two days.

Q. One auction that lasted two days. Now, after that auction took place, what did you do then with reference to disposing of the rest of the property?

A. There were some private sales and the lots sold for I—well, as I recall, some of them sold for around $500 each.

Q. Were there very many of those?

A. Not many, no, but there was some lots sold after the [426] auction. And then the balance of the lots were lost under the interlocutory decree.

(Testimony of Jack Lane.)

Q. Do you know approximately how many lots were lost under that interlocutory decree?

A. No; I do not know that.

Q. The records are in evidence here, I believe.

A. Yes, the records will show that.

Q. Now, Mr. Lane, can you explain how you permitted those lots to be lost or why you permitted them to be lost under that decree?

A. We didn't have the money to pay the taxes and were not able to raise it in such a short period of time. I went to the County of Los Angeles first to see if we could have the taxes put on a ten-year plan. By that I mean during the depression the State Legislature permitted the properties after the taxes had accumulated over a certain period of time they permitted land owners to pay their back taxes on I think it was a 10 per cent down and 10 per cent annually. And then when that plan what they call the ten-year plan was expired, there was a five-year plan. And at the time that we were faced with the payment of the taxes on these lots I learned that there was a five-year plan but under the interlocutory decree the County Assessor ruled that we could not put this particular property under that plan.

Q. And do you now know why that was? [427]

A. No, I do not except that they explained at the time that it was because of the interlocutory decree that had been stipulated to.

Q. In other words, it was because of the compromise settlement that had been worked out be-

(Testimony of Jack Lane.)

tween the attorney general's office of the State of California?

A. On these and other properties.

Q. Now, did you or—strike that.

Mr. Lane, subsequently, did you or the American Pipe and Steel Corporation reacquire any of that property in Palos Verdes?

A. Yes; in 1947, when the Palos Verdes lots were put up for sale at the tax sale, I bought all of the lots that I could afford at that time. I attended the sale.

Mr. Baird: In order that we may understand that, with the permission of counsel for the government, I would like to explain to the Court that under our real estate law relating to such matters here when property is forfeited to the State of California it is subsequently put up for sale at public auction and I think that we are all in agreement about that.

Q. (By Mr. Baird): Mr. Lane, are you now referring, when you refer to a sale in 1947, are you referring to the sale of this particular property which was conducted by the State of [428] California?

A. I think it was conducted by the County of Los Angeles. I am not certain, but I know that we were in the County Building, and I think it was the County Tax Assessor's office that conducted the sale.

And to clarify what I have tried to say there, the policy is to put up the property for a tax sale and

(Testimony of Jack Lane.)

ordinarily you can redeem that property up until the date of the sale but because of the decree the owners of the property in Palos Verdes could not bid at that sale, I mean they could not redeem at that sale. So the public was allowed to bid on it and when I heard the sale was coming up I bought around 197 lots at the tax sale in bidding against the rest of the people bidding at that sale.

Q. And were those lots some of the 700 lots that American Pipe and Steel Corporation had acquired in December of 1943 when it acquired all of the stock?

A. That is correct; some of the lots were.

Q. Well, Mr. Lane, what have you done with those lots?

A. I have held them for investment and I have an offer now for——

Mr. Chase: Just a minute. I object, your Honor. I do not think this is material.

Mr. Baird: Well, I certainly think that it is material.

The Court: How is an offer that is just being considered [429] at this time important?

Mr. Baird: I think it is important because of the fact that it is our theory of this case that American Pipe and Steel Corporation in 1943 went into this as a real estate venture and went into it because——

The Court: Is this corroborative of intent at that time?

Mr. Baird: I think so, your Honor. I think the

(Testimony of Jack Lane.)

core of their judgment at that time was that it did have great potential value.

The Court: For that reason, it may be received. He may answer.

The Witness: I have altogether almost 300 lots there and several weeks ago I was offered $90,000 for 75 of the lots. And within the last two weeks I have been offered $150,000 for the remainder, which, I think, is around 197 or 180 lots and that is at wholesale prices.

Q. (By Mr. Baird): Mr. Lane, were those offers made by responsible people?

A. Yes, real estate builders that have already been building in Palos Verdes. In fact, the offer of $150,000, that offer was made by the man who has done the development work on the property adjoining the lots and he was also one of the people who bought lots in competition with me and others at [430] the tax sale.

Q. Have you made any calculation as to how much per lot that offer would break down to?

A. That figured about $800 per lot. There are two offers. One is at $1,250 per lot and the other offer is about $800 per lot and, I think, that we can get a thousand dollars per lot for it.

Q. Have you reached any conclusion as to whether or not you are going to accept those offers?

A. I am not going to accept either offer. Pardon me, that is, I have of this minute—that is my decision. Of course, I might change my mind next

(Testimony of Jack Lane.)

week, but I have some other negotiations going on which I think would be more attractive.

Q. Mr. Lane, will you tell us, please, why your corporation, the American Pipe and Steel Corporation, did not buy this property at this tax sale in 1947? In other words, what I am trying to ascertain and want you to explain is why did you, as an individual, buy this property or why didn't you, as an individual, buy this property and hold it for yourself rather than have your corporation do it?

A. Well, there were several reasons. One reason was that I am still interested in the real estate and the corporation had their ears knocked down by entering into the real estate business, I think, by this very action we are here now on. [431]

It was difficult to get my people in the corporation to see going back into the real estate business after such an action was brought because they said the real estate business was not germane to the steel business and they had no business having a subsidiary in the real estate business. And the other point of wanting——

Q. Well, now, are you referring to the investigation and audit made by the Internal Revenue Service which has resulted in this proceeding here today? A. Yes, sir.

Q. Who was it that said the holding of real estate was not germane to the American Pipe and Steel Corporation business?

Mr. Chase: Now, I object, your Honor. What relevance does this have?

(Testimony of Jack Lane.)

Mr. Baird: I merely want to clear up something. I want to know whether it was your field agents that said that or was it some of your own associates in the corporation?

Mr. Chase: But that is not in issue in this case and I submit to your Honor that it is not.

The Court: I will sustain the objection.

Mr. Baird: Of course, I certainly do not want to argue the ruling of the Court, but I submit that the answer that the witness gave a moment ago is misleading and might cause the Court to get a wrong impression. I am simply asking [432] for the simple explanation as to whether or not it was the government agent or representatives of the corporation who took that view and I cannot see any reason why we can't have it cleared up.

The Court: Are you attempting to bind the government in any way by the statement?

Mr. Chase: You are not trying to bring in the fact that this man's judgment was influenced by something Internal Revenue agents said, are you?

Mr. Baird: Precisely, not merely Internal Revenue agents but the judgment of the Internal Revenue Service.

Mr. Chase: It wouldn't be binding on the Respondent and, furthermore, that is not an issue in this case. We are not raising any objection to American Pipe and Steel Corporation going into the real estate business.

Mr. Baird: That is precisely the impression that Mr. Lane's associates had and that is precisely

(Testimony of Jack Lane.)

the reason why American Pipe and Steel Corporation did not come in at this tax sale and buy the property. That is all that I am trying to get before the Court. And I think that that is something that we should have clear in this record.

The Court: I think the question as asked is improper.

Mr. Baird: I will see if I can restate it. [433].

Q. (By Mr. Baird): Mr. Lane, may I ask this: Did you or your associates, will you state whether or not you or your associates were under the impression in 1947 by reason of the investigation that had been made and the audit that had been made by the Internal Revenue Service, that it would not be advisable for you to reacquire real estate in the name of American Pipe and Steel Corporation?

Mr. Chase: Just a minute. I object to that. The question is irrelevant and immaterial and there is no issue in the case as to American Pipe and Steel Corporation being engaged in the real estate business.

The Court: I believe he may give his impression.

The Witness: The answer is yes.

Q. (By Mr. Baird): Now, will you break that down as to whether or not that was your opinion or was it the opinion of your business associates?

A. It was the opinion of all of us, all of the business associates in Palos Verdes and American Pipe and Steel Corporation.

Q. There has been introduced in evidence the letter dated November 25th, signed by you and ad-

(Testimony of Jack Lane.)

dressed to the board of directors of American Pipe and Steel Corporation, Petitioners' Exhibit No. 20.

Mr. Baird: Before you answer, may I have this [434] marked for identification, please?

The Clerk: Petitioners' Exhibit No. 36 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 36.)

Q. (By Mr. Baird): Mr. Lane, I show you Petitioners' Exhibit No. 36 for identification, which purports to be a copy of the minutes of the American Pipe and Steel Corporation of November 26, 1943. I have given a copy to counsel for the government and we do have the original minute book here, Mr. Chase, if it is necessary to make a comparison with that. Now, Mr. Lane, can you identify this as being the minutes of the meeting of American Pipe and Steel Corporation board of directors on November 26, 1943, and the purpose of that meeting was what?

A. To consider a letter that was written to the board of directors by me.

Q. And the letter to which you refer is the one offered in evidence here as Petitioners' Exhibit No. 20; is that correct, sir? A. That is correct.

Q. And what was the purpose of this meeting of that date?

A. The purpose of that meeting was to consider whether or not American Pipe and Steel Corpora-

(Testimony of Jack Lane.)

tion could acquire the [435] stock of Palos Verdes Estates, Inc.

Mr. Baird: We would like to offer this in evidence, if the Court please.

Mr. Chase: No objection.

The Court: Exhibit No. 36 in evidence.

(The document heretofore marked for identification as Petitioners' Exhibit No. 36 was received in evidence.)

Q. (By Mr. Baird): Now, Mr. Lane, I notice in Exhibit—pardon me just a moment.

Mr. Baird: If the Court please, my attention has been called to the fact by my associate, Mr. Hair, and also by Mr. Sullivan, counsel for the government, that there has been an error in the calculations as stated by Mr. Lane with reference to the amount received at the auction. Mr. Lane is apparently confused about that amount and there is no dispute between us, between Petitioner and the government about it, and we have agreed that we will stipulate to what the correct amount is. I merely wanted to state that at this point because it has just been called to my attention.

The Court: Can you stipulate it now?

Mr. Baird: I think so; yes, sir.

The Court: If it requires some further time for computation, I think you may as well proceed. [436]

Mr. Baird: Very well, your Honor. Mr. Hair and Mr. Sullivan can confer about that.

Q. (By Mr. Baird): Mr. Lane, we will proceed

(Testimony of Jack Lane.)

with the examination while Mr. Hair and Mr. Sullivan are endeavoring to get the correct data on the amount derived from the sale, from the auction of the lots.

Now, in your minutes of November 26, after reciting the number of lots available in the Palos Verdes area, you then make reference to the fact that it would be an advantage to your company, one of the advantages to your company, the American Pipe and Steel Corporation, would be in connection with your production of the water pipe and casing business.

You commented on that briefly yesterday, but I am wondering if you can give us any estimate as to how much that might amount to in dollars and cents; was that a real advantage to you or was it inconsequential?

A. It would be a real advantage over the years because the thought behind that suggestion was to take in a portion of subdivided property as part of the property on the pipe and then sell those subdivided properties after the initial sales had been made when the property values had gone up and over a period of time that would be a substantial gain.

Q. Now, also, one of the reasons that has been stated is that you could use it to some advantage in connection with [437] your oil well equipment business. Now, in what respects would that be an advantage to you?

A. Well, there again, it is a very similar thing.

(Testimony of Jack Lane.)

We would take the leases on structures that we were familiar with and then lease or sublease those leases to friendly oil companies who would use our equipment. In some instances, we have had opportunities to buy land before the companies got into there to do the leasing and that ran up the price in many instances. In those instances, we, when we would obtain the land, we would be the landowner and we would lease to the other company.

If I might digress just a minute in that respect, Palos Verdes did take over a lease, I cannot think of the name of it now, just what it is called but it is on the Palos Verdes Estates, Inc., books, oh yes; I think it was called the Cat Canyon lease and the Palos Verdes Estates, Inc., intended to sublet that property to other oil companies. After they started to lease the different companies, well we had studied the geology of the area and Palos Verdes leased one-half interest to Fletcher Oil Company and they went in as a joint venture on the other half interest.

The first well on that property came in for several hundred barrels a day—I have forgotten exactly.

Q. Was that profitable for Palos Verdes Estates? A. Very. [438]

Q. Have you used Palos Verdes Estates, Inc., since you acquired it in connection with oil developments, oil refineries?

A. Yes, well, Palos Verdes released the refinery

(Testimony of Jack Lane.)

from the Kreiger Oil Company—but not to get away from the Cat Canyon property for a minute. You asked if it was a profitable thing for Palos Verdes. It was and the development that Palos Verdes did do ran the price of the adjoining land to over a half million dollars in bonuses, the General Petroleum Corporation paid that and that is why Palos Verdes would not get the additional land from the land owners that we were leasing from.

The refinery, that was leased from the Kreiger Oil Company, that was for the purpose of making money in the first place and the second was to prove out some, well, they are what we call bubble caps. In a refinery, you have towers that are part of the refining process and inside of the towers is what we called bubble caps. Our engineers had figured out a type of bubble cap and heat exchanger, used with a heat exchanger produced by National Tank Company, and it was something that we wanted to explore the value of. So we had a two-fold purpose. One was to prove up the equipment and the other was to make money in the first place. And that was a profitable venture, too.

Q. Now, Mr. Lane, will you indicate please what other [439] ventures either in connection with oil or otherwise that the Palos Verdes Estates, Inc., has conducted and carried on since you acquired control of the stock?

A. In line with the real estate business they bought four acres in Bakersfield and rented that. They bought several houses, I think it was five or

(Testimony of Jack Lane.)

maybe it was four or it could have been six, I simply don't remember now, anyway I know they purchased those houses for rentals. And they purchased a garage for a rental unit. And they purchased other property.

The Court: Where are the houses located?

The Witness: Bakersfield, California, and also in Firebaugh, California.

Q. (By Mr. Baird): Where is that?

A. San Joaquin Valley and north of Coalinga. They purchased or leased the land—I have forgotten how they acquired the land—but Palos Verdes built a bulk station, a bulk gasoline station. And, Mr. Baird, if I might have that exhibit right there, I will point to what a bulk station is.

Q. You mean the brochures?

A. Yes. These are the tanks that go in a bulk station. This, together with an office and a truck loading rack—well, there would be several of these tanks. They are called above-ground storage for gasoline and oils, vertical storage. [440]

Q. Will you mark on this exhibit, Petitioners' Exhibit No. 34, in your handwriting, that tank that you are referring to?

A. You mean mark this, yes, the bulk station; that would be it.

Q. I see.

A. And tank No. 1 is a vertical tank that is placed above ground for storage and tank No. 2 is an underground storage tank.

Mr. Chase: If the Court please, I am going to

(Testimony of Jack Lane.)

object. I think that the witness could note the pages on which this equipment appears in the exhibit and we can take note that a bulk station requires tanks. What materiality does the questions along this line have?

Mr. Baird: Well, it has great materiality because part of our case is to show that Palos Verdes Estates, Inc., was not acquired merely as a subterfuge for taxes. We are endeavoring to show the facts here that this was a legitimate genuine business enterprise in 1943 and that the use of it, the use of the company since that time corroborates that view.

The Court: That is the way I understand it. If you are objecting, the objection is overruled.

Mr. Chase: May I ask that counsel place the dates as to all of these activities? There is no continuity to it and no way of telling when it occurred. These are things that [441] probably or might have happened all the way from 1943 to 1947.

Mr. Baird: We will endeavor to give that to you, Mr. Chase.

Q. (By Mr. Baird): Now, Mr. Lane, referring to the bulk stations about which you are now testifying, will you tell us when you installed those bulk stations?

A. Well, there again, the records are the best evidence, but I believe it was in 1944.

Q. In 1944?

A. Yes, I think it was, or it could have been in 1945, but I think it was 1944.

(Testimony of Jack Lane.)

Q. I do not think it would be material whether it was 1944 or 1945 for our purposes. But you do think it was either in 1944 or 1945; is that correct?

A. Yes, sir.

Q. All right, now, does the bulk station consist of more than one of those tanks to which you have referred?

A. Yes, it consists of several of each type of tank.

Q. That is, a tank for instance which you have designated as No. 1, a tank for overhead storage and tank No. 2 which you have designated for underground storage?

A. That is right, and it also consists of a building and a loading rack and the ordinary gasoline service station. [442]

Q. Can you tell us just a little bit about that business, what the purpose of these bulk stations is?

A. Yes, the gasoline is delivered in bulk from the refinery to what we call the bulk plant and that is an area where the gasoline sales are made, say within ten miles of the area of that bulk plant. And the gasoline is delivered in bulk to these bulk stations and then it is taken from the bulk stations in smaller trucks and delivered to the individual service stations throughout the area.

Q. Now, did you own these bulk plants?

A. Palos Verdes built two and they leased them. I believe it was leased on an eight-year payout basis—I am not sure about that exactly but, again, the books will show it—I believe it was on eight-

(Testimony of Jack Lane.)

or nine-year basis, something to that extent. It was a business investment for Palos Verdes and it also brought American Pipe and Steel Corporation the tank business that was involved. The one station at Firebaugh was built at a cost of about, well, I believe it was around $29,000, although again I am not entirely or exactly sure and again as I say the books and records will substantiate whatever the cost was.

As well as I can remember, however, it was something like that, that and the one at San Diego.

Q. Did you have a bulk plant at San Diego?

A. Yes, there was one built at San Diego. [443]

Q. At Palos Verdes? A. That is correct.

Q. And when was that?

A. About the same time that Firebaugh, a little bit after. It was either 1944 or 1945, as I remember.

Q. And did Palos Verdes operate that plant?

A. No, they leased that plant; it was also one that was built for investment.

Q. Can you state whether or not these operations have been profitable to Palos Verdes?

A. Yes, they were.

Q. Now, will you tell us what other line of endeavor did Palos Verdes engage in?

A. Palos Verdes invested in a boat for charter work to oil companies.

Q. Can you tell us something about that boat, what kind of boat was it?

A. It was a mine sweep and was purchased from the United States Government when they sold off

(Testimony of Jack Lane.)

the surplus mine sweeps. And the boat right now is being used in Peru for geophysical work and study of fishes, poisonous fishes under some contract with the government through some school—I am not too familiar with the contract myself but that is what I have been told it is doing down there.

Q. And that is under lease from Palos [444] Verdes?

A. That is right. At the time that boat was purchased a number of oil companies were doing geophysical work off of the coast of Southern California in anticipation of the United States Department of the Interior leasing offshore lands. And I think that the properties now have been turned back to the State of California, but during the intervening years quite a number of companies have done this work offshore. But the Palos Verdes boat only did a small part of that work.

Q. Mr. Lane, there is some reference in the minutes of November 26, 1943, that you have made some investment—pardon me—you had made some investigation about the possiblity of interesting the Celotex Corporation in erecting or handling or constructing housing in the Palos Verdes area.

Was that ever put into effect?

A. No, it was not. About two years before, American Pipe and Steel Corporation, either the year or maybe it was two years before American Pipe and Steel Corporation acquired Palos Verdes, I saw several magazine articles on the Pierce Foundation development of these steel houses. And I

(Testimony of Jack Lane.)

noted in those articles that it was a joint effort by the Pierce Foundation, the Republic Steel Corporation, and Celotex Corporation. And knowing that Carl Dahlberg was with the Celotex Corporation, I contacted him at the time I read the articles about the houses to see if the development was far enough along under which the American Pipe and Steel Corporation [445] could get a license from either Pierce Foundation or Republic Steel Corporation—incidentally, we had been dealing with them for a number of years, the Republic Steel Corporation was our customer and we also bought a lot of products from them—but at the time I contacted Carl the venture was not far enough along to issue licenses or anything of the sort.

The fact is that we were holding that project in what we call our new-products file and we were offering it, offering the idea to the directors but if we had Republic Steel building, there again we could take a portion of the subdividers' land and sew up the steel building sales for that development work.

Q. And will you state whether or not that was one of objectives that you had in mind at the time you acquired the Palos Verdes Estates, Inc., stock?

A. That is right; yes, sir, that is exactly right.

Q. What was the situation in Palos Verdes Estates at that time in 1943, with reference to the distribution of gas for private consumption or industrial consumption, either one?

(Testimony of Jack Lane.)

A. Well, in Palos Verdes and many other rural areas in Los Angeles County, many houses did not have gas because of the restriction order, I think it was called L-86, that restricted the use of gas to those houses that were already built at the time the restriction went into effect. And the propane business, which was rapidly growing because of [126] the restrictions under L-86, was a very lucrative business. The reason that we became familiar with it is that the American Pipe and Steel Corporation was one of the original developers of what they called the private gas system which is illustrated in this brochure as a part of Exhibit No. 34 and it is entitled, "American Liquefied Petroleum Gas Equipment." In there, it illustrates the equipment we developed during the 1930's and it shows in this brochure how the gas was delivered from the refinery to the bulk plant, the liquefied petroleum gas, and we had developed a number of customers as distributors of this gas and we had seen the profits that they had made on very little investment. And that was what we were directing American Pipe and Steel Corporation into without showing open competition with our own customers.

Q. Now, Mr. Lane, referring to one of the brochures of Exhibit No. 34, I will ask if you will indicate in some way in pen and ink whether the brochure contains a picture or diagram of the tank to which you are now referring?

A. The private gas system to which I refer

(Testimony of Jack Lane.)

is the tank on the outside of that brochure, and I have circled that in ink."

Q. Now at this time in 1943, you have testified that your contract with the Chemical Warfare Service had terminated and that left you with a considerable quantity of tanks that had been manufactured to contain lethal gas.

What disposition did you make of those [447] tanks?

A. At the meeting that we are referring to, I suggested to the board of directors that if American Pipe and Steel Corporation acquired the Palos Verdes Estates and if American Pipe and Steel Corporation acquired the surplus tanks from the Chemical Warfare Service, then the tanks that they acquired from the Chemical Warfare Service should be sold to Palos Verdes to enable Palos Verdes to go into the gas distribution business.

There were some 800 tanks involved, I believe, either 800 or 900—I am not certain how many.

Q. Will you state whether or not in the latter part of 1943, American Pipe and Steel Corporation did sell these tanks to Palos Verdes?

A. Yes, they did.

Q. Do you know what the price was for those tanks?

A. I know the total price was $15,000, but I would have to look at the records to see how that price was arrived at it was either $14,000 or $15,000, but I think it was $15,000.

(Testimony of Jack Lane.)

Q. Now, did Palos Verdes Estates ever use those tanks for the purpose that you have indicated?

A. No, because afterwards we found—well, let me say it this way. First of all, they were to be used as a tie-in to a building deal to sell the lots and the lots were not sold on a building deal and the second thing we found there was an acute shortage of gas itself which precluded Palos [448] Verdes from starting up in the distribution business in some other area in Los Angeles County and we had decided that we should not go out of the county because it needed the personal supervision of myself. So after two or three months I came up with the idea that we should adapt the tanks to something else and sell them rather than leave them lay there until the war was over.

Q. Did Palos Verdes sell those tanks?

A. Yes, they sold them at quite a profit.

Q. And when was that?

A. Oh, I think it was during the year 1944, and part of 1945.

Q. Approximately how much profit did Palos Verdes make on the sale of the tanks?

A. Well, there again, the books would show, but I think that it was somewhere around $80,000 or maybe it was $100,000 or $125,000. You see, we took some tanks and took the heads out of them and made dredge pipe out of them.

We had American Pipe and Steel revamp them for dredging pipe and some of the tanks were converted to propane tanks and some were sold as

(Testimony of Jack Lane.)

chlorine tanks so we used whatever means we could to dispose of the tanks at a profit.

Mr. Baird: Now, may we have these minutes of the board of directors of Palos Verdes Estates of December 10, 1943, marked for identification? [449]

The Court: Petitioners' Exhibit 37 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 37.)

Q. (By Mr. Baird): Mr. Lane, I show you the original minutes of Palos Verdes Estates, Inc., of December 10, 1943, the minutes of the board of directors meeting, and I will ask you if that relates to the sale of the Chemical Warfare tanks about which you have been testifying?

A. Yes, it does.

Q. Does it specify in there the amount that Palos Verdes was to pay?

A. Yes, $15,000. They were about double for what American Pipe and Steel Corporation paid for the tanks from the Chemical Warfare Service.

Q. Mr. Lane, may I ask, do you have any objection to our offering the original minutes in evidence and retaining copies for your records?

A. Wouldn't it be possible to offer them and then substitute photostatic copies for them?

Q. I think that that would be entirely permissible.

A. Well, the original minutes there may be

(Testimony of Jack Lane.)

some other question that might come up at some other time.

Q. Yes, of course. [450]

Mr. Baird: If your Honor please, we will have a number of minutes of the American Pipe and Steel Corporation as well as Palos Verdes Estates, Inc., and we will offer the original minutes and then ask permission to withdraw them for the purpose of making photostatic copies.

The Court: That may be done.

Mr. Baird: We offer this in evidence at this time.

Mr. Chase: No objection.

The Court: Exhibit No. 37 will be received in evidence.

(The document heretofore marked for identification as Petitioners' Exhibit No. 37 was received in evidence.)

Mr. Baird: And we would also like at this time to offer in evidence the minutes of American Pipe and Steel Corporation that relates to the same transaction.

Mr. Chase: No objection.

The Court: Exhibit 38 in evidencee.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 38 and received in evidence.)

Q. (By Mr. Baird): Mr. Lane, you started to mention something about your refinery operation

(Testimony of Jack Lane.)

and then we got sidetracked onto something else, and I would like to pursue that for a [451] moment.

Did Palos Verdes Estates, Inc., lease a refinery from the Kreiger Oil Company or buy the refinery?

A. It leased the refinery.

Q. And operated the refinery, and where was that located?

A. In Bakersfield, California.

Q. For what period of time did they operate that approximately?

A. I think it was about 18 months or 2 years. It seems to me that that is what the records will show, either 18 months or two years.

Q. And approximately what time or what year?

A. The lease was made in 1943, shortly after American Pipe and Steel Corporation acquired Palos Verdes Estates, Inc., and it may have been in the early part of 1944.

Q. It was in either December of 1943 or the early part of 1944; is that correct?

A. Yes, January, 1944, I think, was it; it was shortly after we acquired it.

Q. And was that a profitable operation?

A. Yes, quite profitable.

Q. Have you engaged in any other refinery operations and I am referring now to Palos Verdes Estates, Inc.? A. No.

Q. What, if any, other oil development projects has [452] Palos Verdes entered into since you acquired it in 1943?

(Testimony of Jack Lane.)

A. Without looking at the records, I have forgotten what other leases they have taken. The one lease that I mentioned, the Cat Canyon lease, was the biggest oil operation and that was with the Fletcher Oil Company but I think that it took some other leases up in that area, but I do not recall them at this time and I would have to look at the records, the lease records and find out.

Q. Do you know whether or not there was an appraisal or evaluation placed on that Cat Canyon property? A. Do you mean recently?

Q. Well, at the time that you had it or if Palos Verdes still has it you can say as of now but what I am interested in is the time that Palos Verdes had it?

A. There was an appraisal made at one time but I think it was about two years after they acquired the lease but I am not quite sure about that.

Q. Two years after Palos Verdes acquired the lease? A. Yes.

Q. Do you know what the appraisal sale—pardon me. Do you know what the appraisal was?

A. No, but I think it was quite substantial, but I have forgotten now. I might be able to locate that information but I am not sure as of right now.

Mr. Baird: If your Honor will bear with me just a [453] moment, I think that we have about reached the conclusion of our examination of this witness. But I would like to confer with my associates.

Q. (By Mr. Baird): Mr. Lane, I have an-

(Testimony of Jack Lane.)

other incidental question that I would like to clear up: I believe that there was some statement on the part of Mr. Archer to the effect that he was carried on your books or records as an accountant.

Do you have any information about that?

A. No, sir.

Q. Did you know that he had been carried on your payroll as an accountant?

A. No, sir.

Q. When did you first find out that he had been classified as an accountant on your records?

A. Last week when I saw that slip of paper in your office that had been supplied by one of the company accountants.

Q. And that was the first time? A. Yes.

Mr. Baird: Now, if your Honor please, if we could have a recess for a few minutes we have the stipulations that we would like to talk to the government counsel about and we will offer also some of the board of directors minutes and I shall furnish government counsel with those minutes. I think if we could adjourn for five or ten minutes that we will be [454] through very shortly.

The Court: We will accommodate you. We will take a short recess.

(Recess.)

Mr. Baird: If the Court please, government counsel has agreed with us the following minutes of Palos Verdes Estates, Inc., may be received in

(Testimony of Jack Lane.)

evidence. Would your Honor like to receive those as one exhibit?

The Court: That will be all right to have it as one exhibit.

Mr. Baird: I will read the dates and then offer them as one exhibit. We would like to offer the following minutes: Minutes of special meeting of board of directors of Palos Verdes Estates, Inc., June 23, 1943.

Minutes of special meeting of board of directors of Palos Verdes Estates, Inc., August 26, 1943.

Notice of assessment—apparently there is no date on it. Minutes of special meeting of board of directors of Palos Verdes Estates, Inc., dated October 15, 1943.

Minutes of special meeting of board of directors of Palos Verdes Estates, Inc., dated November 4, 1943.

Minutes of special meeting of board of directors of Palos Verdes Estates, Inc., dated December 2, 1943, at the hour of 9:45 a.m.

Minutes of special meeting of board of directors of [455] Palos Verdes Estates, Inc., on the same date, December 2, 1943, at the hour of 11:30 a.m.

The Court: They will be received as one exhibit, No. 39.

(The documents above referred to were marked for identification as Petitioners' Exhibit No. 39 and received in evidence.)

Mr. Sullivan: If the Court please, we would like to make a stipulation in regard to the net pro-

(Testimony of Jack Lane.)

ceeds received and the basis and the loss to Palos Verdes Estates, Inc., on auction of lots which it held in January of 1944. I might explain the reason and the connection with other evidence that the respondent will introduce the 1944 tax return of Palos Verdes Estates, Inc., and this information is included in the consolidated return for 1944, which includes Palos Verdes Estates operations and the Palos Verdes column for sales and cost of goods sold and gross profit or loss.

The Court: Did you say that was the consolidated return?

Mr. Sullivan: Yes, the consolidated return which contains a column for Palos Verdes Estates.

The Court: And does it also include American Pipe and Steel Corporation?

Mr. Sullivan: It is a consolidated return of American Pipe and Steel Corporation which includes the operations of [456] Palos Verdes Estates for 1944, and will be one of respondent's exhibits.

The Court: Very well. Proceed.

Mr. Sullivan: In further explanation of the connection with the stipulation we are about to make with the exhibits to be introduced, the respondent's exhibit of the 1944 return, the data regarding the auction sale of lots in January of 1944 appears in the Palos Verdes Estates column but is not identifiable in that column but the amount of the loss which will be stipulated to does appear in the notice of deficiency which is attached to the petition in

(Testimony of Jack Lane.)

the case of Palos Verdes Estates, Docket No. 28565.

For the lots sold at auction in January, 1944, the net proceeds of the auction after deduction of commissions was $16,185. The basis of those lots was $183,797.91. The loss, the difference between those figures is $167,612.91.

Is that stipulated to?

Mr. Hair: May I interrupt just a moment, if your Honor please, to explain why that stipulation was made. In Mr. Lane's testimony he was under the impression that something in excess of $30,000 was realized through the auction. In fact, there was only about $16,000 which is the figure here and to avoid any question over the inconsistency of that statement we are stipulating what the figure was.

The Court: Is this the loss as shown on [457] the consolidated return?

Mr. Hair: The way the return was made up is confusing and anybody just looking at the return would not know what had happened.

The Court: Very well.

Mr. Sullivan: If the Court please, I would like to introduce at this time about four of the respondent's exhibits containing profit and loss statements of American Pipe and Steel Corporation and Palos Verdes Estates, Inc., which I believe would be useful to the parties if they could go in at this time.

The Court: You may submit them. Is there any objection?

Mr. Hair: No objection.

(Testimony of Jack Lane.)

The Court: They may be submitted.

Mr. Sullivan: The petitioner asks and the respondent is agreeable to make these joint exhibits.

The Court: They will be received as joint exhibits.

Mr. Sullivan: The exhibit is for American Pipe and Steel Corporation, separate and comparative profit and loss statements per returns for the years 1940 to 1943.

The Clerk: Joint Exhibit No. 40-C.

(The document above referred to was marked for identification as Joint Exhibit No. 40-C and received in evidence.) [458]

Mr. Sullivan: The next joint exhibit, American Pipe and Steel Corporation separate comparative profit and loss statement returns for the years 1944 to 1946.

The Court: That will be Joint Exhibit 41-D.

(The document above referred to was marked for identification as Joint Exhibit No. 41-D and was received in evidence.)

Mr. Sullivan: The next joint exhibit will be for Palos Verdes Estates, Inc., separate comparative profit and loss statements returns for fiscal years 1936 to 1943, those fiscal years all ending on February 28th and covering the period March 1, 1943, to December 3, 1943, and a period December 3, 1943, to December 31, 1943, and the calendar year 1944.

The Court: Exhibit 42-E.

(Testimony of Jack Lane.)

(The document above referred to was marked for identification as Joint Exhibit 42-E and received in evidence.)

Mr. Sullivan: The next joint exhibit is Palos Verdes Estates, Inc., separate and comparative profit and loss statements per returns for the calendar years 1945 to 1950.

The Court: Joint Exhibit 43-F in evidence.

(The document above referred to was marked for identification as Joint Exhibit No. 43-F and was received in evidence.)

The Court: Do you have anything further, Mr. Baird? [459]

Mr. Baird: If your Honor please, we are through with Mr. Lane. I think that I will reserve what I was going to say until after the cross-examination of Mr. Lane.

The Court: Very well, cross-examination.

Cross-Examination

By Mr. Chase:

Q. What was the total amount called for by the contract between American Pipe and Steel Corporation and the Chemical Warfare Service in the manufacture of the 25,000 containers?

A. If you want to know the exact amount, Mr. Chase—or the approximate amount?

Q. Do you know the approximate amount?

(Testimony of Jack Lane.)

A. I think it was three million dollars and something.

Q. Wasn't it closer to three and a half million?

A. It could be.

Q. Well, so we will not have any doubt about it——

Mr. Chase: Will you stipulate, Mr. Baird, that the figure was $3,500,000?

Mr. Baird: Yes, we so stipulate.

Q. (By Mr. Chase): I cannot remember if you have testified, Mr. Lane, how long prior to 1942 you had known Mr. Ben Haggott.

A. Prior to 1942, I did not know him.

Q. You had never met the man before?

A. No, sir. [460]

Q. And what was it or rather what time in 1942 did you meet him if you did?

A. I did not meet him in 1942, as I recall; I met him in June of '43.

Q. You had no contact with him prior to that time? A. No, sir.

Q. Now, Mr. Lane, you testified that you and Mr. Archer got together sometime in June or July of 1942? A. That is correct.

Q. But Mr. Haggott actually did not enter your employ until sometime in August?

A. Mr. Haggott?

Q. Excuse me, I mean Mr. Archer?

A. Mr. Archer entered our employ on August 12, of 1942, I believe.

Q. Now, at that time, you agreed to lend him

(Testimony of Jack Lane.)

some $2,500, did you not? A. Yes, sir.

Q. You and your associate, Mr. Kreiger, had agreed to that on the basis of Mr. Archer's representations that he could acquire this stock for between $2,500—pardon me—that he could acquire this stock for between 25 cents to 50 cents a share if you would lend him the $2,500?

A. The representation was the stock had been selling at between 50 cents or between 25 cents and 50 cents per [461] share at a time recently before that, and that he thought—now, I am talking about Mr. Archer now—he thought that he could get the 50 per cent or better of the shares at somewhere in that range and that he would have control of the 3,500 shares for somewhere around $1,700 or $2,000 and that is what he told us that he wanted the $2,500 for.

Q. He did not mention the exact price that he was going to pay? A. No.

Q. And he entered your employ on August 12th; is that correct, sir? A. That is right.

Q. Do you know from the testimony here that he opened an escrow to purchase these shares of stock on August 18, 1942?

A. I think that that was the day testified to; yes, sir.

Q. Now, Mr. Lane, isn't it a fact that you had your accountant secure working papers of the Palos Verdes Estates in the early part of August, 1942, for the purpose of making an examination as to the financial condition of Palos Verdes Estates, Inc.?

(Testimony of Jack Lane.)

A. No, it is not a fact.

Q. That is not a fact? A. No, sir. [462]

Q. The accountant employed by you during that period was Mr. Edling, wasn't it?

A. The firm of Edling, Hightower & Hunt had been doing some auditing work for us and I think it was June 30th—please excuse me, I am trying to think whether it was 1941 and 1942—anyway, they did the auditing work in the middle of June, or rather the middle of the year, at June 30th, and I think that they did it for two years and that it was maybe for 1942 or 1943, but I am not sure; it could have been 1941, 1942, and 1943, but I just am not sure whether it was 1942 and 1943 only, but I do know that they did do some auditing work for us during the middle of the year.

Q. As a matter of fact, they prepared a balance sheet as of June 30, 1942, for the purpose of submitting to the Chemical Warfare Service, of submitting it to them, did they not?

A. I do not know what the purpose of it was but they did prepare a balance sheet for us and I think that it might have been June of 1942.

Q. I am showing you a letter from Edling, Hightower and Hunt, accountants and auditors and tax counsellors, under date of September 2, 1942, signed by Wilford A. Edlington, Certified Public Accountant, which indicates that they made an audit of your fiscal operations for the period ending June 30, 1942; does that refresh your recollection, sir,

(Testimony of Jack Lane.)

that [463] they actually made an audit for you in that period?

A. I stated that they made an audit in either of the two years on June 30th, it is the two years that I am speaking of; it was either 1942 or 1943, or, as I say, it may have been for a period of three years.

Q. There is no dispute then that they made this audit in 1942, is there? A. No dispute.

Q. And I ask you again, Mr. Lane, if it is not a fact that Mr. Edlington secured at your direction some financial data and the financial history of Palos Verdes Estates, Inc., on or about the 15th of August, 1942?

A. Not at my direction, no, sir.

Q. Well, was it at the direction of anyone in American Pipe and Steel Corporation?

A. Not that I know of.

Q. Now, did Mr. Archer discuss the conditions of this escrow with you when you opened it?

A. No, sir.

Q. Did you know that he was going to pay $2 a share for the stock?

A. I knew that he was paying $2 a share but I don't recall when I first learned that, and I do not recall at this time because nothing brings it to my memory, but at some time I did know that he was paying $2 for the stock. [464]

Q. Was there an agreement, a supplemental agreement that he would receive more than $2,500 from American Pipe and Steel Corporation?

(Testimony of Jack Lane.)

A. Oh, yes, after he had gotten some of the stock in, he said that they were coming in pretty good and that he needed some more money and we kept advancing it along and it was after that that I knew that he was paying $2 a share for it.

Q. You gave him a blank, or what amounted to a blank check, that is, for the amount necessary to buy this stock?

A. No. The way the subsequent advances came up, after he received his $2,500, or maybe he had received a little more at that time, I do not remember exactly or remember the exact figure, we were talking about the property and by that time I knew that it was the Palos Verdes Estates property.

So we were figuring out that if we got the whole 3,500 shares that he was asking me to come in with him personally on, if we got the whole 3,500 shares at $2 a share it would only be $7,000 or some odd figure, maybe $10,000, but at getting all of them at that price, the initial thing would only amount to $7,000 which would only amount to $10 a lot and that is why he was extended more than the $2,500 originally asked for and agreed upon.

Q. Well, did that contemplate that you would pay American Pipe and Steel if you went into this thing personally? [465]

A. Not at that time. The fact is we did not know at that time or until after, well, I don't know whether it was April, May, or it might have been back in March.

Q. Mr. Lane, let me get this straight and see

(Testimony of Jack Lane.)

if I understand it. The American Pipe and Steel Corporation was advancing Mr. Archer the money?

A. That is correct.

Q. Now, at some time that you are not certain of Mr. Archer proposed that you come in with him personally? A. That is right.

Q. And you were going to buy all of the 3,500 shares of stock; is that correct?

A. No. I was to come in to help him finance his operation. What he was trying to do was to first of all get control of the company which he figured at first, well he talked about the fact that it would cost around $1,700 to $2,000. And then I don't know where the $2 a share came in but the next time that we discussed these transactions or rather these advances he was paying $2 per share and pointed out that at $2 per share for 3,500 shares, that would only be $7,000 and at 700 lots that would only amount to $10 a lot. That was the time that he was hedging for a few days or few weeks, I don't know how long the period was before he definitely made the proposal that he had not been able to get the financing.

Now, it was at that time that he said that he had [466] not been able to get the financing from the people he first indicated that he could get it from. But he said to me if I could help him raise the financing, we would split fifty-fifty, and just whether that was in April or the early part of May or sometime before it or before May 25th when the letter was written, I do not know.

(Testimony of Jack Lane.)

The Court: How much was involved in this financing plan?

The Witness: The financing that he was raising?

The Court: Yes.

The Witness: Well, what he was trying to do was to get 50 per cent at first. The situation changed and it was rather fluid from time to time. First he wanted to get 50 per cent and then he intended to have the stock made assessable to take care of the back taxes and enough money to take care of operating an office down there in Palos Verdes, a sales office, for a year or a year and a half. And at that time he was talking about $50,000 to $75,000. Then it jumped up to $125,000 and then it jumped back to $100,000. You see, I cannot state any particular figure because at different times we talked at different times about different amounts and he had different ideas when he was talking about certain people that had certain amounts of money and so the figure was changing all of the time. But it ranged from a low, as I recall of about $35,000 or $45,000 up to around $150,000 at [467] one time.

Q. (By Mr. Chase): At this time when you were talking, when he presented this proposal of acquiring these lots for, say, $10 a lot, didn't he explain to you that there were numerous and substantial amounts of taxes against those lots?

A. Yes, this was subject to taxes.

(Testimony of Jack Lane.)

Q. Did you intend to raise money to pay off those taxes ?

A. When he was talking to me about coming in with him?

Q. Yes.

A. Yes, I was going to talk to some friends. And by that time, about by May I think it was, he had something like 2,500 shares, although, I am not exactly sure of the amount. But at one time I know that he did have 2,500 shares and I am not positive whether it was at that May period that he had the 2,500 or later on in June.

But at some period along there, he had 2,500 shares. That is when the transaction between he and I began to jell into a deal where I would help him work on it.

We wanted to raise $100,000 to pay the assessment of $40 per share on 2,500 shares. We felt that whatever other assessment would come in would help pay the rest of it. Now, if the lawsuit which I talked about at the time, which you talked to me about at the time, did not bring the taxes or [468] the total tax penalties and assessments down far enough, we could put them on the ten-year plan and then we could buy with less money than the original amount that he talked about.

Q. Did you contemplate making any investment in this yourself in any substantial amount?

A. I was trying to raise it.

Q. You weren't going to invest it yourself?

A. No.

(Testimony of Jack Lane.)

Q. Did you go so far as to formulate a plan for financing it in any fashion?

A. Well, it was nebulous and it would depend on whether I was able to help him raise any money or not and the agreement was that if I helped him raise the money, I would take the proportionate share after whatever was put up, whatever they needed to handle the deal, then he would divide the other. If I raised a hundred per cent, I would get fifty-fifty and it was just left up in the air like we did many other things.

Q. Now, do you know who was counsel for American Pipe and Steel Corporation during 1942 and 1943?

A. We had two attorneys. We had the firm of Roy Dolley—let's see, what did they call the firm—I know it has changed from time to time—anyway Roy Dolley was the head of the firm. The other attorney was George T. Goggin, he is in the Hellman Building and, yes, he and Roy T. Dolley [469] were the ones.

Q. Mr. Archer testified that Mr. Dolley was the attorney who prepared this decree or this stipulation, the stipulated interlocutory decree of August 2, 1943. Did he advise you of that or the terms of that? A. No, sir.

Q. You had no knowledge of that whatsoever?

A. No, sir.

Q. Now, subsequent to the time that this was entered, did Mr. Archer ever tell you about it?

A. About the terms of that?

(Testimony of Jack Lane.)

Q. Yes. A. No.

Q. No one ever advised you?

A. No. The only thing I had was this Exhibit No. 24.

Q. What is Exhibit No. 24?

A. Exhibit No. 24 shows the amount of taxes per interlocutory judgment and it then shows the estimated taxes for 1943 and 1944, and then it shows the total taxes for the—but it doesn't say anything on there about the taxes having to be paid by, I think it was eight months, eight months period. I don't know exactly because some people have said six months and some have said months and I know that it was one or the other.

Q. Didn't American Pipe and Steel Corporation pay the [470] legal fees in connection with this?

A. I do not know. They may have advanced it to Mr. Archer but I do not know how they were handled. The records are here, are they not?

Q. Did Mr. Archer ever discuss with you, Mr. Lane, the attractiveness of Palos Verdes Estates for tax purposes to American Steel?

A. No, sir.

Q. Now, you have testified that you didn't know how much he was going to make or lose upon the termination of this Chemical Warfare Service contract. Isn't it a fact that you knew in 1943 and had agreed in 1943 to settle the contract for $1,050,000?

A. As I testified yesterday, I thought that it was in the last week of 1943 or the first week or two in

(Testimony of Jack Lane.)

1944—it was right along in that period, but I don't know the date on which we made the settlement.

The Court: What is the amount of the settlement?

The Witness: I think that it was maybe that amount except for a few small items one way or the other, it seems to me like that was the amount.

Q. (By Mr. Chase): Do you remember a meeting about December 16, 1943, at which you were present representing American Pipe and Steel Corporation and also present was Lt. Col. Rooin English, Major [471] John C. McGregor, L. A. Nichols, Lt. Julius Perler, Mr. C. L. Lambert, do you remember that meeting? Does that refresh your recollection? A. No.

Q. It does not refresh your recollection?

A. No. Something that you have there might refresh it but that doesn't. I had a lot of meetings with all of those fellows and I don't remember that specific meeting.

Q. Now, in 1943, wasn't it a fact, Mr. Lane, that the steel products were subject to various severe restrictions on their use?

A. Subject to priorities, yes.

Q. And you could not sell unless it was for someone with a priority; is that not correct?

A. We couldn't replace our steel during the war. You could sell to anyone you could sell to, but you could not replace it with other steel without a priority.

(Testimony of Jack Lane.)

Q. And you could sell it to anyone for any purpose?

A. Yes, but when the stock was depleted and you were out of stock, you were out of business because you had to have priorities in order to replenish the stock.

Q. When you wrote this letter to the board of directors on November 25, 1943, which is Petitioners' Exhibit No. 20, you set forth a number of plans in which you anticipated Palos Verdes Estates would engage if you acquired the company? [172]

A. That is right.

Q. And within two months, Palos Verdes Estates, Inc., disposed of all of its land; can you tell us why that was necessary?

A. Well, first of all your two months, that is incorrect because it hadn't disposed of the land it lost by taxes, the land, but that was not until April, I believe, of 1944 which is five months from the date of November 25th.

Isn't that five months, sir? I think so. Now, the land that they had disposed of by that time was because they did not have the taxes, the tax money to pay the taxes when they were due. The first group of lots were sold to Carl Dahlberg and they were sold to him on the basis that he was to promote the building and to start development down there and I thought through that that it would generate some activity which would bring a higher price for the other lots that we intended to sell later on.

And then the lots that were sold at auction we

(Testimony of Jack Lane.)

thought that we could get more money out of the lots at the auction than we did all of which could be used to pay the taxes on the other lots to make them free and clear. Not having had the money we had to let some of the land go because we could not redeem it before the interlocutory decree had expired or whatever you call it.

Q. You testified that the reason for holding the auction [473] was that the auctioneer had estimated that he could get $100 per lot above taxes; isn't that correct?

A. I think that he thought he could get between $100 and $200 depending on the lots that he was selling and also depending on the turnout.

Q. Now, as far as this letter of November 25th, Petitioner's Exhibit No. 20, Palos Verdes Estates did not develop any of the land which it had in the Palos Verdes Estates area, did it?

A. It did not develop—do you mean it did not put in streets?

Q. Did nothing to it.

Mr. Baird: What time was this, Mr. Chase?

Mr. Chase: At any time they held the land.

Mr. Baird: You mean from the beginning?

Mr. Chase: From the time Palos Verdes Estates was acquired by American Pipe and Steel Corporation?

The Witness: No. It did subsequent to that time.

Q. (By Mr. Chase): Subsequent to that time?

A. Yes.

Q. Palos Verdes Estates did not engage in build-

(Testimony of Jack Lane.)

ing any houses on that land? A. No, sir.

Q. And they never did anything with it? [474]

A. They sold some.

Q. Yes, sold and lost it on foreclosure.

A. That is right.

Q. As a matter of fact, in 1943, it could not build there, could it?

A. That is a reason for making the Dahlberg sale. That was to switch the priorities around so we could, that was the purpose of making it. Now, wait a minute, in 1943, pardon me, I was thinking you said 1944. In 1943, it couldn't because American Pipe and Steel Corporation did not acquire Palos Verdes Estates until December of 1943.

Q. And it didn't in 1944 or subsequent thereto ever build any houses on it?

A. It did not build houses.

Q. Or subdivide it? A. No.

Q. Now, as a matter of fact, I ask you if it wasn't a fact that building restrictions were such that it could not build on it at that time?

A. No, that is not a fact. That is why we were trying to get the building restrictions changed.

Q. Wait just a minute, Mr. Lane. You say that is why you were trying to get them changed. As a matter of fact, the restrictions were on there, were they not?

A. Restrictions on every place. To make my answer [475] clear, the restrictions on every place, yes, they were except where they had taken them off on spot building permits or where they per-

(Testimony of Jack Lane.)

mitted defense housing and in the Palos Verdes area they had not permitted defense housing to be built there yet, but that is what we hoped to get the restrictions waived for in that area and it is why we thought that we would be successful with the project.

Q. As a matter of fact, Mr. Lane, there has never been any cheap housing built there to this date, has there?

A. Cheap is a word that I do not understand. Cheap to you might mean one thing and it might mean something entirely different to me.

Q. Well, below nine or ten thousand dollars?

A. Yes, there has.

Q. In this Palos Verdes Estates area?

A. Yes.

Q. In what area?

A. Well, up in the territory where Ashman is building. I think he was origmally charging $9,500.

Q. What area is that? Can you locate that for us? A. Yes, I can locate it on the map.

Q. This shows the area.

Mr. Baird: Just a moment. If your Honor please, the witness would like to have the other map.

The Witness: Yes, there is another map that gives it. [476]

Mr. Chase: Is this the one?

The Witness: That one is all right, yes. Now, I assume that you understood that I meant the house and lot selling together would go for $9,500.

(Testimony of Jack Lane.)

Mr. Chase: Yes.

The Witness: In this area right here.

Q. (By Mr. Chase): And that is at present under development?

A. Yes, the Malaga area, and all through the Valmonte area, there are numerous different types of houses.

The restrictions for the building of the house itself is around $3,500 or $4,000 in this area here, and in some areas through here, it is $3,500 and if you add a lot and the builder's profit, it can easily come to $9,500 or less than $9,500, that is what I meant to say.

And to further answer that question you asked where the houses had been built or where they were being built and I will say that there are other areas where they can build those houses at that price or lower but they have not at this time been developed.

The Court: Are they Federal or State restrictions?

The Witness: Two kinds. One restriction is laid down by the Homes Association which ruled that they must be of a certain type and have a certain type roof and must not cost less than a certain figure and all of that, I believe that [477] we introduced in evidence an exhibit which listed every lot and showed what that figure was, the minimum figure that a house could be built for on that particular lot. Then in addition to that you have the Federal restrictions.

(Testimony of Jack Lane.)

The Court: And these homes that you just spoke of, are they governed by State restrictions?

The Witness: That is a local restriction.

The Court: A city restriction?

The Witness: Yes, a city restriction. As a matter of fact, it is an association of lot owners that was established when the city was first started and they set up this association of lot owners and each lot has one vote to the directors of this association and the association sets up an assessment to take care of this operation and sets up a small assessment against each lot.

They are the ones that changed the restrictions. And I think that we have here in court the restriction book, Mr. Baird has that.

Mr. Baird: Yes, we have the book.

The Court: I don't think it is material.

The Witness: And the Federal restrictions started out under the limitation order 41 by the War Production Board that there would be no building of any kind in the United States except for defense work and then they laid out the regulations as to who would come under the setup and the local [478] enforcement part of it and there were numerous places where these different places tried to get the restrictions changed or adapted. For instance, in the Bixby area near Long Beach and then south of there in the Torrance area in what we call the Westchester area which is near Inglewood and in each one of those areas the builders went in and through a certain type of application

(Testimony of Jack Lane.)

had the restrictions waived after certain classes of houses in those areas.

And that is what we intended to do in Palos Verdes.

The Court: Very well. You may proceed, Mr. Chase.

Q. (By Mr. Chase): Mr. Lane, you mentioned in the letter of November 25th to the board of directors that this presented possibilities for water pipe and casing business. Was it necessary to acquire Palos Verdes Estates for that?

A. No, it wasn't. In fact, if a person had the capital to go out and buy property, they could have organized their own corporation, but this corporation had 700 lots at $10 a lot.

Q. Plus the taxes? A. Yes, and taxes.

Q. But you were going to use this land to tie in with your sales of pipe and casing?

A. That is right. The development there alone we figured at one time just by laying the water mains in Palos [479] Verdes that would run a profit to the company of $8 or $10 per lot on the pipe alone that they would lay.

Q. You couldn't do that in 1942, could you?

A. Lay the pipe?

Q. Yes.

A. If you got the building materials you could because if they permitted it under the restriction L-41, if they permitted you to have building materials, they would permit pipes. We sold pipe in

(Testimony of Jack Lane.)

1941 and 1942 just the same as we sold it at other times.

Q. And I believe you also testified that you were going to use the Palos Verdes Estates, Inc., so that you could expand your oil well equipment business; is that correct? A. That is right.

Q. Was it necessary to use Palos Verdes, couldn't you have organized another corporation?

A. Certainly we could have but so much the better to do it with Palos Verdes because they had a company there with assets which we could sell and which could carry on that development and with the money that we got from those assets it could be done a lot easier.

Q. You were going to use the money from the real estate to develop an oil-well business?

A. Not to develop an oil-well business, but to use that money to buy leases and then we would lease the property, I [480] mean you would sublease the property to an oil-well company who would buy your equipment. That is done quite frequently in the oil-well supply business; it is not a new idea at all. The same——

Q. Didn't the——

Mr. Baird: Let the witness finish his answer, please.

The Witness: As I say, it wasn't a new idea or it wasn't a new idea in the water-pipe or casing business either. It is just an old idea and other contractors had done it, all we were doing was following the path that others had followed.

(Testimony of Jack Lane.)

Q. (By Mr. Chase): As a matter of fact, it did not take Palos Verdes Estates, Corporation, to get into that kind of business, did it?

A. No, we could have organized another company but it would not have been as practical as having a company that already had those assets that you were buying for two cents on the dollar.

Q. And it did not take the Palos Verdes Estates, Inc., in order to develop the propane business, did it? A. No.

Q. You were selling liquefied petroleum gases before that, were you not? A. Yes.

Q. So it did not take Palos Verdes to develop that [481] business, did it?

A. No, we could have organized another company, if that is your question.

Q. Now, at the point where Mr. Dahlberg made the offer to buy some of this land, how did you expect to create a benefit out of that to Palos Verdes?

A. In a benefit to Palos Verdes Estates, Inc.?

Q. Yes.

A. Well, in two ways. One was that the cost of the lots when American Pipe and Steel Corporation acquired Palos Verdes amounted to I think we figured, I think we figured here yesterday that the figure amounted to about $15 a lot, any way it was something more than $10 and something less than $20. And we were selling those lots at $40. At the time we sold him we did not think that the thing would drag out the way it did and we thought that we would have that money back in from two to three

(Testimony of Jack Lane.)

months because we did not think that he was going to run into the snags that he did run into.

If we had thought he was going to, we would not have gone into the transaction in the first place. We also thought that by giving him the opportunity to start building houses immediately there, it would help the value of the other property we had in the area.

Q. Why did you in two weeks' time put up the rest of the property for auction? [482]

A. We did not put up the rest of the property for auction. We put the property up so that whatever bidders we had on the property, well the fact is we did not intend to sell it all, but we wanted to raise enough cash from the auction and we thought that we could, enough cash to pay the taxes on the balance of the land with the money that we raised at the auction.

It would have been very foolish for us to have said that we were going to only auction off a hundred lots and leave the impression that we were going to pick them out so we did not segregate them. We had sold the contiguous lots to Dahlberg and we put the others up for auction to see how many were sold and then on the rest of them we were going to pay the taxes on them and keep them.

Q. You did not try to find out any more profitable basis or way in which to dispose of this by the sale, rather, other than by the sale to Mr. Dahlberg and the auction, those are the only two methods you ever tried to realize any profit on this land?

(Testimony of Jack Lane:)

A. I don't quite understand that question. Do you mean that I only tried Mr. Dahlberg and also only tried the auctioneer, Mr. Bedilion?

Q. Did you try anything else, or did you do anything else, did anything else occur to you?

A. Those were the only two projects we had. We did a [483] lot of advertising and we have the records of the advertising here some place.

Q. And the only offer you received was from Mr. Dahlberg?

A. We received two or three offers—now, I think we are talking about two different things. What time are we talking about now? If it is in response to my ad that was run in December of 1943, it started December 23, 1943; well, we received a number of responses to those ads but the people that responded to them were not qualified because they did not have the connections to lift the Federal restrictions or get them changed.

I had known Carl and his contacts and I had known that his uncle was very close to the Federal picture and I also knew that he was dealing with these restrictions all of the time in connection with Celotex Corporation matters and his uncle also was dealing with these things in regard to several other different corporations.

And knowing that they had to deal with those restrictions, I knew that they had the personnel and the know-how of getting the restrictions changed and that was what made it attractive to us.

Q. In spite of the fact that Mr. Dahlberg did

(Testimony of Jack Lane.)

not have any money, American Pipe and Steel Corporation put it up?

A. They didn't put up any money, American Pipe and Steel [484] put up no money at that time.

Q. But they did take Mr. Dahlberg's four-year note?

A. I think that the first note was made out for six months and then it was changed later.

Q. Why was it necessary to sell this to Mr. Dahlberg at such a low figure in 1943; couldn't the corporation have waited for some time?

A. Do you mean—what do you mean?

Q. Was there any immediate need to sell that to him?

A. Well, the immediate need was that the taxes were coming due and we did not have the money to pay them.

Q. Did not American Pipe and Steel subsequently loan Mr. Dahlberg money to pay the taxes?

A. Well, at the time the transaction was closed, it was not anticipated.

Mr. Baird: Just a moment. I think the question was American Pipe and Steel—did you mean American Pipe and Steel?

Mr. Chase: I mean Palos Verdes Estates, Inc.

The Witness: Oh, yes, Palos Verdes Estates loaned the money and it was not anticipated at the time that the deal was made.

Q. (By Mr. Chase): What was the necessity then for selling the lots immediately to Mr. [487] Dahlberg?

(Testimony of Jack Lane.)

A. What do you mean?

Q. You stated that the taxes were coming due and you had to get rid of them to Mr. Dahlberg?

A. Not to Mr. Dahlberg. We wanted to sell before the taxes became due so that we would realize our profit on them and get someone in there to develop, to bring in some development in the vicinity so as to increase the value of the other lots we held there.

Q. As a matter of fact, you must have known at that time that you could not develop this property in the time that you had remaining to redeem that for taxes, did you?

A. Quite the contrary. We thought that we could get the deal together and get the money raised before the taxes were due.

Q. Now, the decree was in August, it was rendered on August 3rd, I believe, and it gave six months, is that not correct?

Mr. Baird: That is correct.

Q. (By Mr. Chase): So you had only that time in which to redeem them as far as the taxes were concerned, am I correct in saying that they would expire at about February 3rd or 4th?

Mr. Baird: The August 3rd date is correct and it did provide for six months. [486]

Q. (By Mr. Chase): Now Mr. Lane, you knew——

Mr. Baird: Mr. Chase, would you permit an interruption? I think it might be well to bear in mind however that the final judgment was not en-

(Testimony of Jack Lane.)

tered until either April 7th, 1944—I am not quite positive about that.

Mr. Sullivan: I think that the stipulation of facts sets that out and reads: "All remaining lots not redeemed were lost under the final decree of this Superior Court entering a judgment to quiet title in the State of California. This decree was entered on May 15, 1944."

Mr. Baird: That is the point that I am making. It is true that the interlocutory decree was entered on the 3rd day of August, 1943, and that it did provide, or that it did have a six-months provision in it. But it is also true that the final judgment under that decree was not entered until May 15, 1944, which is the date that occurs in our stipulation.

Mr. Sullivan: But I would suppose that the time limit for paying taxes would be some time earlier than the date of decree, or the date of the final entry by the Court.

Mr. Baird: I cannot answer that because I do not know.

Q. (By Mr. Chase:) Mr. Lane, did you anticipate at any time that American Pipe and Steel Corporation would invest any substantial [187] amounts of money in Palos Verdes Estates?

A. In what way?

Q. Well, for developing and carrying out the plans that you outlined in your letter of November 25th?

A. Yes, that letter of November 25th was quite

(Testimony of Jack Lane.)

a long-range program and in fact American Pipe and Steel Corporation did invest quite a substantial sum a year later, almost $200,000.

Q. Didn't you feel it was worth it to invest that amount of money to pay off these taxes?

A. We didn't have it.

Q. You didn't have it?

A. If we had had it, we certainly would have paid it off but because I for one believed in it so much that I went back later and bought the lots in because I thought it was such a good buy and at that time of the tax sale I bought to the extent of my ability to buy them.

Q. Mr. Lane, American Pipe and Steel Corporation has no interest at present in Palos Verdes Estates, Inc.; is that correct?

A. That is correct.

Q. Mr. Lane, you testified that you had oil interests prior to becoming an officer of American Pipe and Steel Corporation?

A. Yes, sir. [488]

Q. And Mr. Kreiger also had numerous oil interests, did he not? A. Yes, sir.

Q. In fact, he and his father were large independent oil operators, weren't they.

A. Not independent large operators. They were independent and they had six wells at Wilmington and had a refinery when his father died and I think he died in 1939, and the six wells, or maybe it was just five wells, or whatever they had at Wilmington, were sold to take care of the estate taxes

(Testimony of Jack Lane.)

and at the time that we became interested, or I became interested, in the management or the investment in American Pipe and Steel Corporation I think that the only oil interest was the refinery which was called the Kreiger Refinery and at that time it was a small refinery.

Q. But Mr. Kreiger had substantial experience in the oil business, did he not? [489]

A. No, he hadn't. He had just gotten out of school. He was going to Loma Linda, he was studying to be a doctor and when his father died he quit school and gave up the idea of becoming a doctor shortly after his father's death and I think that he had when I first met him, which was a year or two before, I do not think he had any experience whatsoever. The only experience that he had gained at that time was being around the oil company.

Q. Did you still have some oil interests in 1942?

A. In 1942—well, I am sorry, but I am not certain. I became acquainted with the El Tejon Oil and Refining Company I believe in 1943.

Q. You did have some oil interests in 1943?

A. In 1943, but I am not certain about 1942.

Q. Did Mr. Kreiger have an interest in that in 1943? A. In what?

Q. Did Mr. Kreiger have an interest in that?

A. In what?

Q. In the El Tejon Oil and Refining?

A. No. It was a refinery and he had no interest in 1943, after the cancellation—wait a minute—I want to correct that statement to this extent: I

(Testimony of Jack Lane.)

was thinking of having an interest in the ownership of the refinery. I had made a contract and I think at the end of 1943 or near the end of 1943 I had made a contract with certain of the stockholders of [490] El Tejon under which I had proxies that gave me the control of El Tejon Oil and Refining Company. After I acquired those interests, I was unable to get some of the oil that I had contemplated on contracting for to operate the refinery so I made a lease with that refinery to the Kreiger Oil Company of which Kreiger was I think a 20 per cent or maybe it was 10 per cent partner and to that extent at the end of 1943 he did have an interest in the same project that I was interested in, namely El Tejon and I just wanted to make that clear.

Q. During 1943, were you actively seeking any other war contracts or subcontracts?

A. We became active in looking for war contracts right after the December 7th, 1941—was it then that the war started?—we immediately looked for war contracts.

Q. And you set that up during the war years?

A. Yes.

Q. Was your plant operated to capacity? Beg your pardon. Was your plant fully utilized during this period?

A. No, we had hoped to have utilized it but the contract was cancelled that we were looking forward to receiving.

Q. Did you do any subcontracting work in this period? A. Oh, yes.

(Testimony of Jack Lane.)

Q. Did you have any substantial amount of that work during this period?

A. I think that we can tell that from our sales and I [491] believe that our sales were around a million dollars, let's see, 1941 and I think in 1942, the annual volume was about a million dollars.

Q. What do you mean by the figure on Petitioners' Exhibit No. 31; what do you mean by a backlog of only $850 at the end of 1943?

A. That is the backlog of contracts awarded, prime contracts.

Q. And that does not include subcontracts or other contracts?

A. Or what we call commercial work, no, you would have a larger volume.

Q. As a matter of fact, the contracts awarded during 1944 were in excess of $1,800,000, were they not?

A. Yes, those were awards—what was that figure?

Q. In excess of $1,800,000?

A. No, I think it was—may I see that schedule? I think that that was a million dollars, was it not? I think it was contracts awarded in 1944, I think that figure was a million dollars and they were completed during 1944 and 1945. That is the way I remember it as I read that schedule. Then I think it went up to the middle of 1943.

Q. Mr. Lane, you were with Mr. Dahlberg when you viewed the property prior to the sale to him in 1943, were you not? A. Yes. [492]

(Testimony of Jack Lane.)

Q. Did you suggest to him that he choose any particular lots, say the better lots that were available there?

A. No, we had two parcels as it shows in the ads. One parcel contained 126 lots and the other parcel contained 311 lots. And we showed him both parcels, they were all contiguous lots as we have seen on the map there. And he felt I believe that he could have one man by the name of Robinson finance one parcel and he mentioned a couple of other men that could handle the other one, friend of his uncle and as I have said I had no hesitancy of his uncle's ability to have the restrictions removed from both sections and that is where I was mistaken.

Q. As a matter of fact, the restrictions were never lifted, were they?

A. The Federal restrictions?

Q. Well, the ones that you were counting on Mr. Dahlberg's uncle lifting—they were not lifted, were they? A. Oh, they——

Q. Not until after the war?

A. They expired after the war.

Q. But they were never lifted for anybody else?

A. Nobody else ever worked on them. After we lost the property, there was no concerted effort thereafter to have those restrictions lifted.

Mr. Chase: May it please the Court, if we can recess [4:3] for lunch at this time I think we can shorten it with just a few questions after lunch.

(Testimony of Jack Lane.)

The Court: It is that time of day. We will recess until 1:30 o'clock.

(Whereupon, at 12 o'clock noon, the hearing was recessed, to reconvene at 1:30 o'clock p.m., same day.) [494]

Afternoon Session

The Court: You may proceed.

Whereupon,

JACK LANE

resumed the stand and testified further as follows:

Cross-Examination
(Continued)

By Mr. Chase:

Q. Mr. Lane, how long prior to the time you were invited to bid by the Chemical Warfare Service for furnishing one ton containers, how long previous to that had you been carrying on negotiations with them?

A. Well, that was a very unusual contract because the nature of it was such that the Chemical Warfare Service, they were unable to find the manufacturer that knew anything about forged welding.

Q. Can't you just tell us, approximately, how long it was before you were invited to bid?

A. How long before we were invited to bid?

Q. You were invited to bid sometime in August; is that correct?

(Testimony of Jack Lane.)

A. No, invited to bid several times on that contract, we were invited several times and that is why the question wasn't quite clear.

Q. Well, when was the first time that you were invited [495] to bid?

A. It was either in May or in the early part of June, because our initial bid went in on June 26, 1942, and that bid went to the War Production Board in San Francisco and that was the initial figure. And then after——

Q. Pardon me, let me interrupt you right there. Prior to June 26th, had you had any extensive negotiations with the Chemical Warfare Service?

A. That was what I was trying to say; I don't know whether it was in May or in June, I think there was a period in there of three or four weeks. You see, ordinarily on a bid of that kind it would take several weeks to even put in a preliminary figure.

Q. And had you had discussions leading up to that?

A. Yes, with the War Production Board.

Q. The War Production Board?

A. Yes, in San Francisco.

Q. And you were invited to bid on August 18, 1942, were you not?

A. By the Chemical Warfare Service?

Q. Yes, by the Chemical Warfare Service.

A. I am not familiar with the dates exactly but I know that we sent in several different bids.

Q. I believe that I am in error, you were invited

(Testimony of Jack Lane.)

to bid on August 12th, 1942; are you familiar with that bid? [496] A. No, I am not.

Mr. Chase: Counsel, will you stipulate that they were invited to bid on August 12, 1942?

Mr. Baird: I will stipulate that that is a letter from what seems to be the files of the Chemical Warfare Service and that there was a letter dated August 12, 1942, to the American Steel, to the American Pipe and Steel Corporation. I think that it should be shown to the witness, however, so that he can see what we are talking about.

Mr. Chase: Yes, I will show it to the witness.

The Witness: Yes, that is one of the invitations.

Q. (By Mr. Chase): And the date of this letter is August 12, 1942; is that correct, sir?

A. That is correct.

Q. Now, Mr. Lane, you had had conversations with Mr. Archer sometime in June or July looking towards his employment with American Pipe and Steel Corporation, had you not? A. Yes, sir.

Q. And he actually entered the employ of American Pipe and Steel Corporation on August 12, 1942; is that correct?

A. Yes, that is the date.

Q. Was Mr. Archer's employment influenced in any way by the getting of this contract; were you going to use him in expediting work in general on all contracts or in connection [497] with this contract?

A. Well, his employment, as stated yesterday, when we first discussed the Chemical Warfare Serv-

(Testimony of Jack Lane.)

ice contract with Mr. Archer that was on a Sunday before the date of July 29th, I believe. And on the next Monday he took me up to meet Colonel English—he was Major English at that time, I believe—and Mr. English advised us that they would have nothing to do with the procurement of the contract in that office but after that contract was awarded that their office then would be the local administrative office.

And Mr. Archer asked him what our steps should be when we were in the process of talking with the War Production Board on the contract and that was English's reply to that. Then on a Wednesday, that was the 29th, that is when I asked Mr. Archer to come to work with us on the general expediting and assistance in the negotiation of the contract and helping us get the prices and the figures on equipment, the equipment and the component parts for the equipment.

Q. And that was for the Chemical Warfare Service contract; is that correct?

A. That is correct, for the contract or for the facilities that would be used to prepare the contract.

Q. Then, after August 18th, after entering your employ, Mr. Archer opened an escrow to buy the stock of Palos Verdes Estates and I believe that you have heard that testimony, have [498] you not?

A. August 18th, I think that is the date, yes.

Q. And he opened it as nominee, you have heard that testimony, too, have you not?

A. Yes, I heard—no, wait a minute—I did not

(Testimony of Jack Lane.)

hear that testimony. I heard the testimony that he had made an offer of some kind on a piece of paper that was signed nominee but I do not recall any testimony here as to that escrow or whether the escrow was opened up as nominee or something else.

I did hear something about there being the word "nominee" on a piece of paper, yes, I heard that.

Q. And, Mr. Lane, isn't it a fact that he was a nominee of American Pipe and Steel Corporation?

A. No, it is not a fact.

Q. Now, if the testimony is introduced that Mr. Archer represented prospective purchasers that he was acquiring it for a defense plant, for instance, to take advantage of Palos Verdes Estates, would you change your testimony?

A. I should say I would not. He might make any kind of representation he wants but I'm not going to change my testimony.

Q. Does American Pipe and Steel Corporation have any investments in real estate as of this present time?

A. Yes, I don't know the list of them offhand but they have considerable real estate. [499]

Q. Do they hold any prospective developments, similar area, that is, to Palos Verdes Estates?

A. No.

Q. What kind of real estate do they hold, is it industrial real estate?

A. Well, they own some industrial property and some property also in San Bernardino. I don't know exactly what it is, maybe a half a dozen lots or

(Testimony of Jack Lane.)

it may be just two or three lots, whatever it is they own some real estate there. Then they have some lots in Riverside County, they have 320 acres that are about to be subdivided at Hemet, or it may be 400 acres, they don't own them, they leased 55 houses, too, in the County of Riverside which we are renting to people at $40 a month or $45 a month, something like that. And then there is some other property, but I would simply have to get a list to be sure about it.

But the major developments, the development property that American Pipe and Steel Corporation has as a corporation is the Hemet Airport and the thing that I have just outlined about renting the houses in Riverside County. In addition to that, I have 6,000 acres at Blythe, and there is the Blythe Aircraft Corporation and the airport there and we are subdividing that to aircraft people.

Mr. Chase: I have no further questions. [500]

Redirect Examination

By Mr. Baird:

Q. Mr. Lane, I wish you would look at the letter of August 12, 1942, addressed to American Pipe and Steel Corporation and about which Mr. Chase interrogated you and indicated that this was a letter inviting you to submit a bid. Will you look over that letter carefully, please? A. Yes, sir.

Q. Now, I want to ask you if you had received any other written communication from the Chemical Warfare Service prior to this date?

(Testimony of Jack Lane.)

A. Not that I recall. We received several requests by telephone and otherwise and by calling on their office.

Q. Mr. Lane, had you had any contact with representatives of the Chemical Warfare Service about the contract that you ultimately obtained prior to this letter of August 12, 1942?

A. Many, because as you will see it only allowed, this letter only allowed us five days to compile a three-and-a-half million dollar bid; it said there in that letter that it must be in their office by noon on August 17th.

Q. You are referring to paragraph 4 which says that it must be received in the office at San Francisco by not later than 12 o'clock noon, Monday, August 17, 1942? A. That is right.

Q. And the next paragraph has to do with the drawing of specifications and receipts in duplicate are enclosed and they [501] ask you to sign one copy of the receipt for the purpose of classified data and requested you to return the same to their office.

Now, I will ask, Mr. Lane, can you tell as approximately how long it would take you to prepare a bid of that kind?

A. It would take a month to do it, a month to do the engineering on the facilities; then, after that, it would take another two or three weeks to estimate it and that is using an unusually large size force. We did have a short period of time but we had at least 60 or 90 days to prepare the engi-

(Testimony of Jack Lane.)

neering on information for this bid that they are talking about there.

Q. How or in what manner were you contacted about this contract prior to this letter of August 12, 1942?

A. The first contact was with the War Production Board—I have forgotten just exactly when it was or just the exact date, but I believe it was in May or early in June. I do know that the first letter to the War Production Board was dated June 26, 1942, offering them a price for these tanks and the reason that the War Production Board handled it was because it was a security item and wasn't to be publicized as to quantity or what agency it was with and the War Production Board was acting as an intermediary for the preliminary figures.

And I might add that at the time that this letter came in, incidentally, that, well, I will say it this way: [502] That we were pretty well assured that it would be between us and maybe one other firm or we were to have the job on the preliminary figures.

Q. Now, Mr. Lane, I show you a schedule relating to contracts and completed contracts and backlog with reference to the year 1944, and about which Mr. Chase interrogated you on cross-examination. Now, I will ask you if the document that I am showing you is a schedule relating to 1944, and is that similar to the documents that have been introduced in evidence with reference to the years 1942 and 1943?

(Testimony of Jack Lane.)

A. Yes, and this is the prime contracts that were awarded during the year 1944.

Mr. Baird: We would like to offer this in evidence, if your Honor please, to make the story complete for 1944 and Mr. Chase has been furnished a copy of this.

Mr. Chase: Respondents have no objection.

The Court: It will be received as Petitioners' Exhibit No. 44.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 44 and received in evidence.)

Q. (By Mr. Baird): With reference to Petitioners' Exhibit No. 44 I will ask you to explain whether or not this relates only to the contracts which were awarded to you in 1944? [503]

A. That is correct.

Q. Now, had you obtained any very substantial contracts in the year 1944 prior to May 12, 1944?

A. Well, on May 12th, we received a contract of $140,400 but that is not in my estimation a substantial contract; that is a run-of-the-mill type of contract.

Q. Up until that time, had you received any contract in 1944 which amounted to more than $1,800?

A. No, sir.

Q. That was the largest contract?

A. Just a minute, please, I think the largest was $172.50 and all other contracts awarded during that year were awarded after that date of May 12th.

(Testimony of Jack Lane.)

Q. And the largest contract and that one that comprises the bulk of the contracts for the year was awarded on July 15, 1944?

A. That is correct.

Q. So that the total, of the total amount of contracts that you had in 1944 and that were awarded in 1944 substantially all of that came to you after July or some date in July of 1944, approximately July 15th? A. That is correct.

Q. So that the backlog of war contracts appearing in the extreme right-hand part of Exhibit No. 44 in the amount of $1,060,275.04, that is for contracts that you had had in your [504] plant for a period of less than six months?

A. Yes, that was a backlog appearing as of December 31, 1944, that had not been completed during that year and that million dollars approximately in backlog went over into 1945.

Q. Now, the exhibit relating to the year 1943 indicated that you had a backlog of roughly $850 for the year 1943. So, as I understand these exhibits, between December 31, 1943, and July 15, 1944, you had practically no prime war contracts at all in your plant? A. That is correct.

Q. Mr. Chase asked you something about the subcontracts and I believe you told Mr. Chase that these schedules did not include your subcontracts.

A. That is correct.

Q. Now, can you tell us approximately what proportion of your business for the year 1943 or the year 1944 related to subcontracts? Was it large or

(Testimony of Jack Lane.)

small or can you give us some general idea? Of course, we may have to go to the records and compile a schedule but if you know.

Mr. Chase: I would suggest, counsel, that you do go to the records, that would probably be preferable.

Mr. Baird: We would want to do that, sir, and will ask permission of the Court to do that over the weekend and we shall offer it at the first convenient opportunity on Monday. However, if the witness wants to express an approximation now, [503] I see no objection but I will not press it if you object.

Mr. Chase: I do object to it.

Mr. Baird: Very well.

Q. (By Mr. Baird): Now, Mr. Lane, from your analysis of Exhibit No. 44 which you have just analyzed and from the previous exhibit, from the analysis he may have made relating to the year 1944 and also Petitioners' Exhibit No. 31 relating to the year 1943, I will ask you if you can tell us what percentage of the plant capacity was engaged during those two years. I have not stated that very aptly but I am trying to find out whether you were operating at full capacity and, if not, what was the ratio of operation?

A. Well, the thing was this: That we were contemplating operating at somewhere near full capacity before the time that the Chemical Warfare Service contract was cancelled. That contract amounted to three-and-a-half million dollars and we learned here a while ago that that was approxi-

(Testimony of Jack Lane.)

mately the figure and we also developed here a while ago that we did approximately one million dollars worth of business during the year 1942.

Therefore, that made the dollar volume of capacity at that time four and a half million dollars. Now, I am not quite sure that the sales under the contract, and I am talking about sales of completed items at the time the contract was [506] terminated or included in the termination claim but I think it was around $442,000 so we will say roughly a half million dollars was deducted which makes our sales a million and a half dollars total as against three and a half million dollars which was capacity for the year.

So, under those circumstances, then, you would have about a third of a million and a half against four and a half million or you would have roughly a third of capacity in the plant.

Q. Now, Mr. Chase made inquiry of you as to why American Pipe and Steel Corporation did not pay the taxes or advance the money to pay the taxes which were due on Palos Verdes Estates, Inc. prop- y. Now, I will ask you whether or not you can tell us anything about the financial condition of American Pipe and Steel Corporation at that time with reference to loans that it was carrying at the bank in connection with oil contracts or in connection—pardon me—I mean in connection with war contracts or in connection with other operations of your company?

A. I think that one of the letters that has been

(Testimony of Jack Lane)

put in here as an exhibit was the request for the War Department to give us some aid in an urgent way because we had overdrawn, I mean we were overdrawn as to our loaning capacity at the bank and we were completely without funds. The bank made the settlement, I mean the bank received the settlement check from the [507] Chemical Warfare Service sometime in January or February but as that letter states, the one that is in as an exhibit there, that was not sufficient funds to take care of our needs and the bank had or they had opened up another loan so that the creditors from the Chemical Warfare Service contract would not get caught and that was made at the request of the Chemical Warfare Service.

Q. And do you know how much that was?

A. No, I do not recall the figures; I think it was for a couple hundred thousand or so.

Q. Mr. Lane, were you during that period of time, that is the latter part of 1943 and the early part of 1944, had you completed paying for the stock of American Pipe and Steel Corporation which you had acquired back in 1940 or 1941 or whatever the date was?

A. No. I bought it on a five-year plan and I did not finish paying for that until 1946 or 1947.

Q. Will you state whether or not you had a substantial amount on that stock purchase agreement that you still owed?

A. Yes, I did. I owed quite a substantial amount

(Testimony of Jack Lane.)

I also owed a substantial amount on my El Tejon contract.

Q. Your El Tejon contract?

A. Yes, sir.

Mr. Baird: I think that that concludes our examination of Mr. Lane. [508]

I might say, however, that we might desire to show a schedule showing the amount of outstanding loans of Mr. Lane and his company at that period of time and we might want to prepare a schedule showing the amount of the subcontracts and submit that to the Court when it convenes next week.

Recross-Examination

By Mr. Chase:

Q. Mr. Lane, when you bid on this Chemical Warfare Service contract and when you received it, you constructed a special plant facility for taking care of it, did you not? A. That is correct.

Q. And that is in addition to your regular plant?

A. Yes, that is right, what we did—well, let me make that clear. We tore down part of a plant and erected another building on that.

Q. But you did have to construct a special facility?

A. That was because of the arrangement of the material, I mean of the equipment inside the building.

Q. Now, the remainder of the plant or the plant that you had before you constructed the special

(Testimony of Jack Lane.)

facility, that operated at approximately capacity, did it not?

A. No, because the bolt tank shop was idle at that time. And that was in connection with the contract that we were referring to a while ago that we received in May of 1944. The large welding shop was idle because we used a part of the large [509] welding shop to build the component parts to put them in the Chemical Warfare Service building and in connection with that equipment and of course that was a small amount of equipment in volume and it did not fill up the shop but we had to keep the manpower we had; in fact, we used all of the manpower plus all we could get on the Chemical Warfare Service contract.

And for that reason we were short of labor and had to give that priority and we could not put work in the other shop and that is why we were in the low basis that we were in.

Mr. Chase: I have no further questions.

Mr. Baird: That is all I have.

The Court: You are excused.

(Witness excused.)

Mr. Chase: May it please the Court, Mr. Baird has agreed that three letters, or four letters, which I hand to the Clerk, may be admitted in evidence with the stipulation, or he has agreed that they were received by the people to whom they were mailed and they are true copies of the letters.

The Court: He stipulates nothing as to their contents?

Mr. Chase: These are the letters on which we could not identify the signatures, there is no stipulation with regard to that. Simply that the letters were received by these people is the only stipulation we have.

Mr. Baird: I want to state to the Court that I am [510] in agreement with what counsel has said. However, I do want to say that two of the letters bearing the signature in pen and ink of R. P. Archer, those letters were not signed by Mr. Archer and he so testified on the stand and a comparison of that writing with documents that we know he signed would indicate that he did not sign them.

Further, we do not know the origin of these letters and do not know whether they were sent out by Mr. Haggott's office or where they came from, but we are willing to admit that the people received them in due course of mail.

The Court: They may be received as one exhibit.

The Clerk: It will be Respondent's Exhibit G.

The Court: Will be received as Respondent's Exhibit G.

(The document above referred to was marked for identification as Respondent's Exhibit G and received in evidence.)

The Court: You may call your next witness.

Mr. Sullivan: I have some documents that I would like to offer at this time if it would be convenient.

Mr. Hair: It would be quite all right with us, sir.

Mr. Sullivan: On second thought, inasmuch as Mr. Chase is not in the room, I believe that he has gone up to get a witness, I believe that I had better wait for him.

Mr. Baird: We will be glad to be interrupted at any [511] time he returns.

Mr. Sullivan: Thank you.

Mr. Hair: I will call Mr. Towle.

Whereupon,

HOWARD H. TOWLE

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your full name?

The Witness: Howard H. Towle.

Direct Examination

By Mr. Hair:

Q. Mr. Towle, will you state your present address? A. 2725 Via Anita.

Q. Where is that located?

A. That is the north boundary of Palos Verdes, the second street from the boundary that is.

Q. What is your present occupation?

A. I am a real estate broker.

Q. A real estate broker?

A. Yes, sir.

(Testimony of Howard H. Towle.)

Q. How long have you been engaged in the real estate business?

A. I started in the real estate business in Palos Verdes as a salesman in 1921, it was in December of 1921. [512]

Q. You were at that time a salesman and not a broker? A. That is right.

Q. How long have you actually been a real estate broker?

A. I took my broker's license in 1945.

Q. Where is your office located?

A. At 437 Via Corta in Palos Verdes.

Q. Are you familiar——

The Court: Just a minute, counsel. Will you wait until Mr. Sullivan returns.

Mr. Hair: Pardon me.

The Court: You may proceed, Mr. Hair.

Q. (By Mr. Hair): Are you familiar with the real estate development, commonly known as Palos Verdes Estates? A. Yes, sir.

Q. How long have you been familiar with that area? A. Since 1921.

Q. Were you in some way connected with the original Lewis organization that established the Palos Verdes Estates?

A. Yes, that is when I started with them under E. G. Lewis in December, 1921.

Q. Have you been in contact with the developments in Palos Verdes continuously since that time?

A. Well, I have lived at my present address since 1924.

(Testimony of Howard H. Towle.)

Q. And that is located in Palos Verdes [513] Estates? A. At 2725 Via Anita.

Q. And did you buy the lot and build the house on it yourself? A. Yes, sir, I did.

Q. When did you acquire that lot?

A. I bought it with convertible notes in 1922.

Q. How much did you pay for the lot?

A. $400.

Q. Do you have any idea what the present value of that lot is, that is what its value as a lot is at this time?

A. I would say $4,500 because I sold the lot next to mine that I owned for some time for $3,500 about a year ago.

Q. How much did you pay for the lot that you sold for $3,500? A. $500.

Q. And when did you buy that lot?

A. Well, I bought that, in fact I got it from my mother in 1941 or something like that.

Q. Were you familiar with what happened to the original project of Palos Verdes Estates?

A. Was I familiar with it?

Q. Yes. A. Oh, yes.

Q. You do know whether it got into financial difficulties or anything of that sort? [514]

A. Yes, it got into difficulties when they borrowed a million dollars and then failed to pay interest on it so they lost it.

Q. And that was the so-called bond issue?

A. That is right. I believe it was for a million dollars.

(Testimony of Howard H. Towle.)

Q. Are you familiar that as a result of their default on the bond issue that something else happened?

A. Well, for a long time the land laid there and nothing happened.

Q. Then what happened?

A. Then the bondholders took over at the end of the depression and I do not remember exactly what year that was but I went to work for them at that time.

Q. You went to work for the new organization?

A. That is right, the new organization.

Q. And that was brought in, this new organization was brought about by the bondholders?

A. I think Mr. Wiley was the man that was the head of that.

Q. Do you know whether that was the corporation or not?

A. It seems to me that it was Palos Verdes Estates, Inc.

Q. I believe that is right.

And you have been closely in contact actually with the developments in Palos Verdes, say, since 1940? [515]

A. Actually in the business since 1945 because after it was—well, let me put it this way: Right after the war was when I opened my office in the building where the drug store is.

Q. And where were you during the period of World War II?

A. I was with the California shipyards.

(Testimony of Howard H. Towle.)

Q. In war work at that time?

A. Yes. I couldn't get into the Army so I did the next best thing.

Q. Why did you go into the shipyards at that time?

A. As I say, I thought it was my duty, the next best thing. Now I first tried to enlist because I was in the first world war as a pilot and I was getting pretty old to be a pilot and so although I tried and got as far as having my picture taken and after filling out three sets of questionnaires, I didn't get in. Then I met a young fellow and I remember he had on one of those hard hats, a shipfitter's hat, and so I asked him what he was doing with that kind of hat on and——

Q. Let's not go into details. But you did get into the shipyards?

A. Yes. It was a result of my inability to get into the Air Corps itself.

Q. Was it due in part to the fact that the real estate business was just a little flat at that time?

A. Well, at that time—well, no, not in my case because [516] I was selling houses in Gardena and I was doing very well.

Q. Are you familiar with what actually went on in the Palos Verdes area at that time?

A. Well, yes, I lived there all of the time and I knew what was going on.

Q. Was there a great amount of real estate activity at that time? A. Oh, very little.

Q. In your opinion, was that based on—well,

(Testimony of Howard H. Towle.)

first, let me ask you this: In the time that you have been associated with one project or another in connection with Palos Verdes Estates, how many pieces of real estate would you say that you have handled, that is, you have sold?

A. Well, that is a pretty hard question to answer, but I would say that it runs into several hundred I would imagine.

Q. Several hundred that you have sold.

Due to your experience in the real estate field and particularly in view of your activities in connection with Palos Verdes Estates, do you feel that you have a basis for an opinion as to the value of those properties down there?

A. Why, yes, I think I have. Of course, your population of Palos Verdes has increased, well you might say it has increased from my family because I was the first one to move in and it was increased to 4,600 people and it is only reasonable that the land goes up as the people come in. [517]

Q. Now, you say that you were interested in this project from the very beginning in 1921?

A. That is right.

Q. And you were a believer in this project and optimistic about its possibilities for future development?

A. I was this optimistic that I went to work for Palos Verdes, when I first went to work for the Palos Verdes project, I did not even know if I was going to get a commission out of it and I did not

(Testimony of Howard H. Towle.)

care because to me it was such a wonderful proposition that I told my wife that I would work for nothing as long as I could make enough for us to live on, that is how optimistic I was about it.

I think that my first commission check was $5.

Q. Have you ever had any reason to change your optimistic point of view?

A. No, I have owned and sold a lot of property myself in Palos Verdes.

Q. You have actually owned and sold a lot of that property yourself?

A. That is right, and I still own a lot of property down there.

Q. That is in addition to your present home?

A. Oh, yes.

Q. Are you familiar with the fact, I believe that you stated that you were familiar with the fact that there was no [518] great amount of real estate activity in Palos Verdes, say in 1942 and 1943?

A. Not during the war, just before the war ended business began to start.

Q. Well, it has already been shown by the evidence produced here that that was, to a large extent, due to restrictions that were imposed by the government or even by the Home Association but mostly restrictions of the government.

A. I believe that is right.

Q. Do you feel that the value, that the actual inherent and potential value of that property was low in 1942 and 1943?

A. Oh, certainly it was very low at that time.

(Testimony of Howard H. Towle.)

Q. Pardon me, I do not believe you get my question. I am not asking you about the current market value.

A. Oh, I see. Pardon me. Will you repeat your question again?

Q. In your opinion, was the potential and future value of that property low in 1942 and 1943?

Mr. Sullivan: Just a moment, please. I will object, if the Court please, on the ground that I cannot see what significance or relevance there could be to any issue in this case as to inherent or potential value based on some opinion about inherent or potential values with no indication of how much time is contemplated in connection with the inherent and potential values and it is therefore objected to on that ground. [519]

The Court: Will you make your question more specific?

Q. (By Mr. Hair): In 1942 and 1943, would it have been your opinion that if the war should end suddenly or shortly after the end of 1943 that the old values which you had seen in Palos Verdes would be reflected in the sale prices during, say, the next four or five years? A. I think so.

Mr. Sullivan: Just a moment. I object to that, if the Court please, on the grounds that the witness has said that during the war years he was working in the shipyards and not in the real estate business and we understand that even though he resided in that area his occupation during the war was in the shipyards and I take it that is about a full time

(Testimony of Howard H. Towle.)

occupation and I do not think that there has been a foundation laid for him to answer as an expert for valuing that property as of any war year.

The Court: He may answer.

Mr. Hair: Will you answer the question, please?

The Witness: Well, I believe so.

Q. (By Mr. Hair): And you believed that then in 1942 and 1943? A. Yes.

Q. Mr. Towle, is it or is it not a fact that in your [520] particular business your stock in trade, in a sense, is a knowledge of the values of real estate in the areas that you are dealing in?

A. It is the only thing we can go on.

Q. Did you during the period of World War II maintain your contacts with other men in the real estate business in the Palos Verdes area?

A. Well, I knew them and I talked to them quite often. Colonel Lowe, who was the assistant general manager under Lewis, was an old friend of mine, of course. He went into the Army though as a Colonel and I lost contact with him for a time, but after he came back we talked it over.

Q. Did you talk to any other real estate people?

A. Yes, I believe that Mr. Willett was there at that time.

Q. And since you have returned to your activities in the real estate brokerage business in 1945, you had been continuously active in the Palos Verdes area? A. In my own office, yes.

Q. Have you during that period of time actually bought and sold lots in Palos Verdes for your own

(Testimony of Howard H. Towle.)

account? A. Quite a number of lots, yes.

Q. Have you handled a great number of lots for other individuals? A. Yes. [521]

Q. Have you had the experience of handling the purchase and sale of the same lot on several occasions and I mean by that have you sold it to, say, Mr. A and subsequently handled a transaction whereby Mr. A sold to Mr. B, and so on?

A. Oh, yes.

Q. And what has happened to the values at which properties have been sold where you have handled those transactions through a series of purchasers?

Mr. Sullivan: Pardon me. I think it should be made clear as to what period of time we have reference to on a question of that sort.

The Court: I think that reasonable.

Q. (By Mr. Hair): Will you please confine your answer, Mr. Towle, to the period between 1945 and the present? A. Well, some lots——

Mr. Sullivan: Just a minute. If that is the period, I object to it on the ground that it is irrelevant and immaterial and it would not be useful to have an opinion on values after the war was over.

The Court: In a matter involving value subsequent facts can be introduced to show corroboration.

Q. (By Mr. Hair): Mr. Towle, would you be able to identify for us any particular lots that you have had that experience with? [522]

(Testimony of Howard H. Towle.)

A. I believe that I can identify nearly any lot in the Palos Verdes Estates.

Q. Well, do you mean that you are so familiar with Palos Verdes Estates that you could take a map and put your finger on a specific lot and know that that was a lot that had been sold in a particular transaction? A. Yes, sir.

Q. And would you say that you know the lots in Palos Verdes Estates almost as well as you know the people?

A. Well, I have handled an awful lot of them.

Q. I am going to show you Petitioners' Exhibit No. 32 which is a map that was used in the advertising in connection with an auction made on January 15th and January 16th, 1944, by American Pipe and Steel Corporation and it was conducted by a man by the name of Bedilion who was acutioneer when they auctioned off those lots for Palos Verdes Estates, Inc.

Now, would you be able to identify the lots on that map?

A. Well, I may not know exactly the lots, but I know the tract and the block number generally. Of course, you have on here your lot numbers and the tract number.

Q. Mr. Towle, I believe that this book that you brought with you is your own individual record that you maintain?

A. That is right. This is made up of little maps of this area. [523]

Q. And it contains, or rather the contents of

(Testimony of Howard H. Towle.)

that book is a group of small maps which are enlargements of the various tracts in that entire area?

A. Yes, sir.

Q. And your purpose in maintaining those is to keep track of what happens to the individual lots?

A. Yes, it is very difficult to carry a map of this size so you have to condense it down so you can find them.

Q. You provided me earlier with a couple of those little maps that you have there on which you had identified certain lots. Would you like to have these in connection with any further questions about these lots?

A. Yes; in connection with this map, there are these——

The Court: That will mean nothing in the record; his testimony will mean nothing unless he can associate it with this area.

Mr. Hair: We offer these for identification. They are small maps which have no title on it but it embraces the area surrounded by——

The Witness: Grand Via La Costa shown on that map is now called Palos Verdes Drive.

Mr. Hair: Yes; bounded by Grand Via La Costa on the one side and on the other side by the semicircular street called Paseo del Mar.

The Court: It will be received as [524] Petitioners' Exhibit No. 45 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 45.)

(Testimony of Howard H. Towle.)

Mr. Hair: And I also offer for identification a second small block map bounded on the one side by Grand Via La Costa, on the other side by Paseo Lunado, and on a third side by Yarmouth Road.

The Court: It will be marked Exhibit 46 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 46.)

Mr. Hair: And that embraces tract No. 6888.

The Court: It is not necessary to describe it if you are going to ask the witness about the same things; you just need to have it marked for identification.

Q. (By Mr. Hair): Now, Mr. Towle, I show you Petitioners' Exhibit for identification No. 45; can you identify that exhibit as any part of the map which you have before you?

A. This section right here.

Q. The area shown on the Bedilion map is a location of the tent from which the auction was to be held; is that correct? A. That is right.

Q. Let the record show that the witness has before him the large map which is Petitioners' Exhibit No. 32 and that he [525] is attempting to identify Exhibit No. 45 in connection with Exhibit No. 32.

Now, Petitioners' Exhibit for identification No. 46 covers tract 6888; is that correct?

A. That is right.

(Testimony of Howard H. Towle.)

The Court: I cannot hear you.

The Witness: 6388 and it starts right here.

The Court: Starts right where?

The Witness: At Palos Verdes Drive and goes down to Paseo del Mar which is the ocean front.

Q. (By Mr. Hair): This tract shown by Petitioners' Exhibit for identification No. 46 then, would that area, would you properly call that contiguous to tract 7144 which is covered by Petitioners' Exhibit for identification No. 45?

A. It lies just north of it.

Q. Now, we have in evidence in this case, Mr. Towle, a deed to Mr. Carl Dahlberg in Palos Verdes Estates, Inc., which includes lot 2 in block 2233, tract 7144. A. Block 2233?

Q. Block 2233, lot 2, tract 7144. Do you have any knowledge of any sale of that particular lot?

A. It was sold for $1,500 in 1948; and I got this information from Leon Vilmont who was with the Ivan T. Jones Co. at the time. [526]

Q. And who is the Ivan T. Jones Co.?

A. They are the developers of this area.

Q. And when you say "this area," what do you mean? A. The area of this map.

Q. And that is in connection with Petitioners' Exhibit 46 for identification? A. Yes, sir.

Q. Now, I call your attention to lot 7 in block 2233, tract 7144, and will ask you if you have any knowledge of any transactions involving that lot?

A. Vilmont also sold that lot for $1,200 in 1949,

(Testimony of Howard H. Towle.)

I think it was; no, it was 1948 and I put down the date 7-22-33 and sold in 1948.

Q. Now, I call your attention to lot No. 12 in block No. 2233, tract No. 7144.

A. That was sold in 1940 for $750.

Q. Now, those are all lots in tract 7144; is that correct?

The Court: Were all of these lots the same size, did they all have the same square footage?

The Witness: No. No. 1 is a 65-foot frontage, 201 feet by 173 feet. The other, the little lot for $750 was 60 foot wide in the front, 48 in the rear, and 147 feet deep, so the lot sold, the one that sold for $1,500, was quite a bit larger. [527]

Q. (By Mr. Hair): Mr. Towle, in your opinion, are those prices comparable considering the size of the lots?

A. Yes, because I bought two lots on Palos Verdes Drive, one for $750 and one for $500.

Q. Which lots are you referring to that you bought?

A. I bought lot No. 10 in block 2338 and lot No. 13.

Q. And in what tract? A. That was 7144.

Q. Tract 7144, block 2338. Respondent's Exhibit 11 shows that those two lots were included in the lots conveyed by Palos Verdes Estates, Inc., to Carl Dahlberg. You say that you bought lot 10 in block 2338, tract 7144, in 1946 for how much?

A. $750, I think it was.

Q. Do you still have that lot?

(Testimony of Howard H. Towle.)

A. No, I sold it about a year ago for $2,250.

Q. What about lot No. 13?

A. I still own that.

Q. How much did you pay for that?

A. $500.

Q. And when did you buy it? A. In 1945.

Q. And you have not sold that. Have you had any offers?

A. No, but I could have sold it at the same time that I [528] sold the other one, but I did not want to.

Q. How much are you holding that lot for at the present time?

A. I would probably sell it for $3,500.

Q. Do you have a chart on tract No. 6888 there?

A. Yes.

Q. Will you look at lot No. 5 in block 2219?

A. Lot No. 5?

Q. Yes, block 2219. A. Yes.

Q. Do you have any information about that particular lot?

A. Vilmont sold that for $1,800 in 1949.

Q. In 1949? A. Yes.

Q. How about lot No. 2 in that same block?

A. That was sold for $1,500 in 1949.

Q. And what is the comparative size of those lots? A. Well, that was 60 by 124.

Q. Which lot?

A. Well, the other lot is 78 by 128.

Q. And those are comparable lots then?

A. Yes.

(Testimony of Howard H. Towle.)

Q. How about lot No. 4 in block 2223?

A. Well, that is the lot that I bought one [529] time.

Q. Do you know that lot?

A. Yes, I sold it.

Q. How much did you pay for it?

A. I took it in on a deal for about $50 and it was something that I had to take in at the time because I did not want the thing at the time really.

Q. When was that? A. In 1945.

Q. How much did you get for it when you sold it? A. $675.

Q. And was that a fair price at that time?

A. I thought it was. As a matter of fact, I couldn't find the thing at the time; I just measured off the steps and said it was right here because there were no roads or anything.

Q. There were no roads or improvements yet?

A. That is right.

Q. But it sold for $675? A. Yes.

Q. And when did you say that you sold that?

A. In 1949, I believe that is when I sold it.

Q. Now, referring again, Mr. Towle, to Petitioner's Exhibit No. 46. A. Yes.

Q. What knowledge do you have of the present situation with respect to that tract? [530]

A. Well, they are building an awful lot of houses on those lots now and I do not think you could touch any of those under $3,500.

Q. And who is handling it?

A. The Ivan T. Jones Co.

(Testimony of Howard H. Towle.)

Q. And what did you say that the Ivan T. Jones Co. was doing?

A. He is developing that. Of course, that particular spot there, the street is not through, but it still sold for $1,500 and $1,800, so the minute that that street is through there, it will be a lot more. I have been debating on buying that lot for $1,500.

Q. You mean to buy it back?

A. Yes, because I think it will be worth $3,500 as soon as they put the street through.

Q. Is Jones Co. putting in the street?

A. He will do it, but first he tries to get the property owners to do it and to get the people who own the lots to put up their share first.

Q. Do you know how much of that tract that he owns?

A. Jones and Howard own about 500 lots as I remember and when they divided them up, Howard kept them on this side.

Q. And what side do you mean?

A. That is the east side and Jones kept the ones on the west side, and apparently they bought, oh, they bought a number [531] of lots in there since then so he could put in the improvements.

Q. So in other words he has some contiguous lots to make it worth while?

A. I think there are 49 or 50 houses that are under construction.

Q. And he has built roads in there as well?

A. Oh, yes, they have put in a lot of roads.

Q. What sort of roads?

(Testimony of Howard H. Towle.)

A. Well, they are macadam roads and they have rolled curbs and then they put in the electricity and the gas and the water.

Q. Do you know how many lots Jones has sold up to the present time?

A. Well, it's just about all of them; I do not think they have very many left.

Q. You mean out of the 500 lots?

A. That is right.

Q. Do you have any knowledge of what they are selling those lots for, lots that have residences on them?

A. Well, what Jones does in this case, he turns the lots over to builders probably on a small down payment and then they sell the houses and then they put their prices on them. I cannot give an exact or correct answer on the amount. I imagine they put quite a good price on there, but I cannot give [532] the correct amount.

Mr. Sullivan: Let's not have any imagining about the thing; if the witness doesn't know, he can say so.

The Witness: Well, different lots are different prices.

Q. (By Mr. Hair): Do you have any definite knowledge of what they were sold for in that area?

A. You mean that the house sold for on this point right here?

Q. Well, you state on this point right here.

A. I believe that lot 2 in block 2221——

The Court: What lot is that? What exhibit?

(Testimony of Howard H. Towle.)

The Witness: No. 46.

Q. (By Mr. Hair): How much did you say that lot or the house and the lot sold for?

A. The lot sold, well, it was sold to a builder for $6,900, and he recently sold the house and he told me the other day that they received $35,000 for it.

Q. Do you have any direct knowledge of any house and lot in Palos Verdes that was sold during 1943, the period 1942 and 1943, with which you had direct connection which was sold or resold within five years after that?

A. I can give you a pamphlet that I happened to pick up. [533] I had dinner at that house Sunday night.

Mr. Sullivan: I have no objection if it can be made clear as to what part of Palos Verdes area this is.

Mr. Hair: We will clarify it.

We offer this as Petitioners' exhibit for identification next in order.

The Court: That will be Petitioners' Exhibit 47 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 47.)

Q. (By Mr. Hair): Mr. Towle, the folder which you gave me is headed on the front page, "Hideaway House in Palos Verdes Estates, California."

Was that piece of paper or this pamphlet that

(Testimony of Howard H. Towle.)

we have marked as Petitioners' Exhibit 47 for identification, what is that?

A. It is a home that Pierre Lemour bought during the war for $12,500.

Q. Do you know when he bought it?

A. In 1942, I believe.

Q. He bought this house in 1942, you know that of your own knowledge? A. Yes.

Q. What happened to that house within five years after [534] that?

A. Well, it was sold to a man for $47,500.

Q. And when was it sold?

A. In 1946, I believe—wait a minute—no, 1950.

Q. Well, that was not within five years after 1942. It was 1950 then and that has been eight years afterwards? A. Yes.

Q. Do you have any knowledge of what the owner of that house today asks for it?

A. He asks $65,000.

Q. And this is the same house?

A. The same house.

Q. That you know sold for $12,500?

A. Yes.

Mr. Hair: We offer in evidence Petitioners' Exhibit 45, Petitioners' Exhibits 46 and No. 47.

Mr. Sullivan: No objection.

The Court: They will be received in evidence.

(The documents heretofore marked for identification as Petitioners' Exhibits Nos. 45, 46 and 47 were received in evidence.)

(Testimony of Howard H. Towle.)

Mr. Hair: Now, may we have this marked for identification?

The Clerk: Petitioners' Exhibit 48 for identification. [535]

(The document above referred to was marked for identification as Petitioners' Exhibit No. 48.)

Q. (By Mr. Hair): Mr. Towle, I hand you what has been marked for identification as Petitioners' Exhibit No. 48 and I will ask you to state what that is? A. That is a point——

Q. No, what is this paper that you have in your hand?

A. This is a map of the tentative tract 17606.

Q. And where is that located?

A. It is called Rocky Point in the City of Palos Verdes.

Q. Can you locate this particular area on the Bedilion map which is Petitioners' Exhibit No. 32?

A. Lot 2110.

Q. You mean block 2110? A. Yes.

Q. And is that an ocean frontage?

A. Yes, all ocean frontage.

Q. On Petitioners' Exhibit No. 32, what does that indicate with respect to that particular property? A. I do not know what you mean.

Q. Does it indicate that that property is subdivided into lots or that there have been street improvements? A. Nothing done.

Q. No improvements? [536]

(Testimony of Howard H. Towle.)

A. Nothing at all.

Q. And Exhibit No. 48, what does that purport to be? A. It is now being subdivided.

Q. This is now in process?

A. They are driving stakes out there right now.

Q. Do you have any personal or direct knowledge of that operation? A. I sold it.

Q. What do you mean, you sold it?

A. I sold the tract of land.

Q. To the buyer of the tract of land?

A. That is right.

Q. And you sold block 2110, you sold that to the subdivider? A. Yes, Cameron and Tarmaster.

Q. How many lots do they have in there?

A. 73.

Q. When did you sell that property?

A. The deal was closed in April, I believe, April of this year.

Q. 1954? A. That is right.

Q. How much did they pay for it?

A. $110,000 and the owner reserved three lots for himself, Nos. 16, 17 and 18 right on the front. [537]

Q. Do you have any knowledge of what they propose to sell these lots—pardon me—strike that. Is this a housing project; will they build houses?

A. Each house has to be individually built; the house restrictions in here are $25,000.

Q. Have you seen the price list?

A. They do not have the price list out.

(Testimony of Howard H. Towle.)

Q. Do you have any knowledge of what is proposed?

A. Mr. Berry thinks that his are worth $10,000 apiece.

Q. Who is that?

A. He is the man that owned the land.

Q. At the time you sold it to Cameron and Tarnuster and you say that he reserved three lots. Will you tell us, did you say that he would sell those lots at $10,000 apiece?

A. He has not intimated the price that he is waiting for. He is waiting to find out what they are going to get for theirs.

Mr. Sullivan: Just a minute. I think this is simply conjecture as to what somebody else will get.

Mr. Hair: I will withdraw the question as asked, your Honor.

Q. (By Mr. Hair): Do you have any definite basis whatever for saying that Mr. Berry expects to get $10,000 for those lots?

A. The only thing I can tell you is that he wanted [538] $150,000 for the property. He got $110,000 for it plus the three lots.

Q. You mean less the three lots?

A. He got $110,000 cash and the three lots.

Q. The three lots that he retained?

A. Yes, he retained the three. And he has to get more than $10,000 if he comes out with $150,000.

Q. In other words, he had a piece of raw land and he sold all of it except three lots for $110,000?

A. It had to be subdivided before he could pick

(Testimony of Howard H. Towle.)

out the three lots; this map had to become of record before he could pick out the three lots.

Q. But he had some form of reservation by way of description of the property that he was retaining? A. That is right.

Q. In your opinion, based on your knowledge of what they informed you to sell it for, he wanted $150,000 for the whole tract or $110,000 in addition to the three lots? A. Yes.

Q. So he came out of the deal retaining the three lots which otherwise would have gone into the transaction for $40,000? A. Yes.

Q. Mr. Towle, if you will look at this map again, we identified some lots in tract 7144, is that right? [539] A. That is right.

Q. As having belonged to Mr. Dahlberg. On that map, of lots in tract No. 7144, lots having been deeded by Palos Verdes Estates to Carl Dahlberg as shown by Petitioners' Exhibit 11 and I believe you also identified the adjoining property as the one now being subdivided by Ivan Jones Co.?

A. That is right.

Q. Now, where is this lot with respect to the property which Jones is subdividing?

A. He mentioned the fact that Yarmouth Road is the northern boundary of that exhibit.

Q. Let's identify it for the record. Mr. Towle, any time that you have referred in your testimony to this map you are talking about Petitioners' Exhibit No. 32; is that correct? A. Oh, yes.

(Testimony of Howard H. Towle.)

Q. Which is the Bedilion auction map?

A. That is right.

Q. And you were not referring to the little individual tract maps that we have here?

A. You asked me about this property, where it was located.

Q. And you are looking at Petitioners' Exhibit No. 32 at the moment?

A. Yes, but you asked me the relative position and I said according to this map. [540]

Q. I merely want to bring out that you are talking about the Bedilion map which is Petitioners' Exhibit No. 32.

A. That is right. And you want to know where this property is?

Q. That is lot 2110?

A. At the end of Yarmouth Road.

Q. What direction?

A. That would be east by a little south.

Q. The western end? A. Yes.

Q. West by a little south of the Jones subdivision?

A. Of the Jones office which is on this corner of Palos Verdes Drive.

Q. And roughly how far is that away from the Dahlberg lots that you identified in tract 7144?

A. A little less than a mile, I believe.

Q. Less than a mile? A. Yes.

The Court: We will take a brief recess.

(Recess.)

(Testimony of Howard H. Towle.)

The Court: You may proceed, Mr. Hair.

Mr. Hair: We offer Petitioners' Exhibit No. 48 in evidence.

Mr. Sullivan: No objection.

The Court: It will be received. [541]

(The document heretofore marked for identification as Petitioners' Exhibit No. 48 was received in evidence.)

Mr. Hair: And I would like to have this marked.

The Court: Petitioners' Exhibit 49 for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 49.)

Q. (By Mr. Hair): Mr. Towle, I am about to hand you what has been identified as Petitioners' Exhibit 49, which is a two-page brochure or pamphlet issued by Ivan T. Jones Co., 3920 Wilshire Boulevard, Los Angeles, and it is labeled "Landa Bay, a Development of Distinction and Beautiful Palos Verdes Estates, Featuring Pacific Ocean Views and Individual Home Plans of Permanent Value."

Are you familiar with that pamphlet?

A. I have seen it many times.

Q. Does that relate to any of the properties that we have been talking about here during your testimony?

(Testimony of Howard H. Towle.)

A. Well, it relates to Lanada Bay which is part of the property that you are talking about.

Mr. Sullivan: Will you make it clear as to when the brochure was issued?

Mr. Hair: Yes, I will find that out. [542]

Q. (By Mr. Hair): Referring to Petitioners' Exhibit No. 32 which is the Bedilion auction map, I ask you whether or not this pamphlet refers to the tract we have previously described as being developed by the Jones Co.?

A. That would be 6888, I believe.

Q. And that is the tract which adjoins tract No. 7144? A. That is right.

Q. In which we located the lots deeded to Mr. Dahlberg? A. That is right.

The Court: Will you have him fix the date?

Q. (By Mr. Hair): Do you know when this brochure was issued?

A. In 1949, I believe that is it as near as I can remember, I remember that when the brochure came out it was about the time that Vilmont sold those lots that you asked me about.

Q. You mean the lots in tract 6888?

A. 7143 and also 6888.

Q. We did not talk about 7143.

A. I beg your pardon. 7144, pardon me.

The Court: You may offer it.

Mr. Sullivan: No objection.

Mr. Hair: We offer it in evidence.

The Court: It will be received. [543]

(Testimony of Howard H. Towle.)

(The document heretofore marked for identification as Petitioners' Exhibit No. 49 was received in evidence.)

Mr. Hair: I just have two or three more questions.

Q. (By Mr. Hair): Mr. Towle, do you know whether or not in the area adjoining tract 7144, which embraces lots that were sold to Mr. Carl Dahlberg which we have mentioned several times before, do you know whether or not they were using butane gas at any time?

A. Using butane gas on some of this property at the present time.

Q. At the present time? A. Yes.

Q. Were they using it there in 1943?

A. Yes, there were two houses there.

Q. At least two houses that you knew of. Where would you say those houses were with respect to tract 7144?

A. Well, one is on the west side of Palos Verdes Drive just outside the property line south of Palos Verdes and the other is on the east side of the road across the street.

Q. And those are directly across the street from the lots that are in tract 7144?

A. That is right.

The Court: What is the significance of whether or [544] not they used butane gas?

Mr. Hair: Earlier Mr. Lane developed the fact that one of the purposes that they had with respect

(Testimony of Howard H. Towle.)

to Palos Verdes Estates was to use the containers that the American Pipe and Steel Company had for the use of butane gas in that area and that was one of the things that they were going to do, to sell those containers.

The Court: Very well.

Mr. Hair: I believe that that is all I have, your Honor.

The Court: You may cross-examine.

Cross-Examination

By Mr. Sullivan:

Q. Mr. Towle, you started with E. G. Lewis about 1921 selling lots? A. That is right.

Q. Do you know whether it is true that during the decade of the 1920's that the project as a whole under E. G. Lewis and perhaps under his immediate successor that they were unable to meet the interest on the bond issue, isn't that correct, could not meet it from the operation of this real estate project?

A. That is right.

Q. And then along about 1930 or 1931 the default in this interest caused the starting of foreclosure proceedings on the [545] bond issue and isn't it true that the conditions became even worse during that period of time while the foreclosure proceedings were unsettled and prior to the time that the corporation of Palos Verdes Estates, Inc., took it over?

A. Well, they were not too good because, of course, the depression was on, you know.

(Testimony of Howard H. Towle.)

Q. Yes. Then are you familiar with the fact that the corporation, that is Palos Verdes Estates, Inc., tried for the remainder of the decade of the 1930's to sell lots there and were so unsuccessful in selling them that they had to resort to having exchanges of lots to preferred stockholders in great numbers of preferred stockholders and they turned in their stock and received lots in exchange; do you remember that that was the fact?

A. I believe that they did. At the time, I was with the bondholders; I worked with them and John Lyle was general sales manager. My job with them was to try to get the people who owned lots to build homes on them and I was quite successful in doing that. But we could not interest enough people. The idea that Lyle had was to get people to come in because if you can get the people to come in you just don't have to worry because if they do come in they will take it away from you and that has certainly been proven lately.

Q. Now, coming on down to the late 1930's and early 1940's, from the period of about 1939 up to 1943, how does that [546] period of time compare, wasn't that about the worst time of all in Palos Verdes Estates' history in the selling of lots?

A. Well, at first, well, at that time, in the first place, people were afraid they would be bombed out and you could not buy materials anyway.

Q. So that you would say of all of the history of Palos Verdes Estates, the history of it as being a

(Testimony of Howard H. Towle.)

difficult place to sell lots in any quantity that the worst time was from about 1939 to 1943?

A. I believe that is so.

Q. Then you—strike that.

Then, can you compare general conditions on real estate activity down there in 1946 with this period, this war period of 1939 through 1943, about how did 1946 compare with that?

A. I can tell you this: I opened my office at just the tail end of the war. I was with the Los Angeles shipyards at that time and I opened my office the day after I was let out at the shipyards and my business picked up and I had an upstairs office over the drug store and it was wonderful, so from then on it has always been good.

Q. From 1946 on, there has been a very sharp improvement? A. Oh, yes.

Q. Isn't it true that generally each successive year after 1946 that the general real estate activity in that area [547] from 1949 through 1953 and 1954?

A. Well, as I say, as I understand it, the water Company has been setting one and a third meters a day for months which would be an average, you might say, of a new meter a day because there are only five working days in the week and they set one and a third a day, and I heard them talking to the men and they said that they did that, one a third meters a day and that has been going on for weeks and months. So it has been along, going along about the same.

(Testimony of Howard H. Towle.)

Q. You are speaking then of the completion of the houses?

A. When a house starts, they have to set a water meter.

Q. In regard to the vacant lot activity during that period, has that improved radically in the last three or four years, that is from 1949 through 1953?

A. It is very difficult to buy lots: they are getting very scarce down there.

Q. It is so good down there that the lots are getting scarce and by that I suppose you mean those lots with street improvements and so on?

A. That is right because, you see, with the impetus of this building they have used up most of the good lots. Of course, they are buying lots now without any improvements on them, as we stated here, on lots where the streets are not in and they are going for $1,500 and $1,800 and each one of the [548] people will have to pay for that street.

Q. In other words, there is enough demand so that they will buy them without any improvements?

A. I put the street in one short block myself: I raised the money from the people.

Q. And that situation has arisen only in the last year or two, has it not? A. That is right.

Q. Could you give us an idea as to the lots that are in the Palos Verdes Hills, which is, as I understand it, or which includes a rather large area besides the tracts which were subdivided originally by Lewis and the remaining lots were taken over

(Testimony of Howard H. Towle.)

by Palos Verdes Estates then which I take it this Petitioners' Exhibit, the auctioneer's map, Exhibit 32 covers.

But, what I am getting at, can you give us an idea about how much real estate there is in Palos Verdes Hills in addition to this real estate that we have been talking about?

A. There were 16,000 acres in the original grant that the syndicate bought. And I would say that Palos Verdes Estates is one-fifth of it.

Q. Could you tell in a general way to what extent this other land in the Palos Verdes Hills competes with the Palos Verdes Estates tracts for the customers there may be for lots and houses?

A. Well, the entire tract has recently sold to the Great [549] Lakes Carbon Corporation for nine million dollars.

Q. At earlier times, though, were there not some subdivisions in other parts of the 15,000 acres?

A. They have a number of subdivisions.

Q. Do you know what they are?

A. Well, they have Rollings Hills, which is a greater portion in the center of Palos Verdes peninsula, you might say. Then you have the subdivisions in what is called Westfield and Eastfield, and then you have Portugese Bend which is quite a nice development.

Mr. Hair: Mr. Sullivan, would you have the witness state that when he is talking about Rolling Hills he is talking about a subdivision, and not just undulations in the ground.

(Testimony of Howard H. Towle.)

Q. (By Mr. Sullivan): By Rolling Hills, that was the name of a subdivision, was it not?

A. Yes, the Vanderlip Syndicate owned it.

Q. And that is the name of a subdivision in the inland part of Palos Verdes Hills?

A. That is true.

Q. Could you recall about what proportion of Palos Verdes Estates lots that appear on the map which is Petitioners Exhibit No. 32, about what proportion in along about 1942 or 1943, about what proportion had street improvements in and had sewers or any improvements at that time? [550]

A. The only street—you are referring to tract 7144?

Q. No. I am referring to your estimate of the proportion of the entire area there shown on the auctioneer's Redilion map which is Petitioner Exhibit No. 32, what proportion in 1943 had street improvements, sewers and so forth?

A. The only place that they had sewers was for the business section. It is all septic tank and cess pools except we are connected with the metropolitan sewer system but it just takes in the business section and the apartment areas.

Q. And the business section; is that called the Plaza?

A. The Plaza and the apartment house section behind it.

Q. In other words, two or three square blocks, something like that?

A. Well, the Plaza is one square block and the

(Testimony of Howard H. Towle.)

business section behind it and there is about, well I would say about four square blocks.

Q. Well, now, on street improvements, could you estimate what proportion were in in 1943 of the entire area shown on the auctioneer's map which is Petitioners' Exhibit No. 32?

A. Oh, about 50 per cent.

Q. 50 per cent of that entire area had street improvements, and are you thinking about back there in 1943, the early part of the war?

A. Yes, about 50 per cent, looking at this map.

Mr. Sullivan: No further questions. [551]

Redirect Examination

By Mr. Hair:

Q. Referring to that Plaza that Mr. Sullivan asked you about, do you know any real estate in that business section area?

A. Well, I guess I do; I own one lot.

Q. You own one lot now?

A. Yes, sir.

Q. And have you previously owned any lots there?

A. Not in the Plaza. I own an apartment house right behind it.

Q. Did you or didn't you buy a lot there in 1945?

A. Yes, I bought the lot next to the drug store building.

Q. And how much did you pay for that lot in 1945? A. $2,000.

(Testimony of Howard H. Towle.)

Q. Do you still own that lot? A. Yes, sir.

Q. Have you had any firm offers for it?

A. I had an offer about three months ago for $17,500.

Q. Why didn't you sell it?

A. I want twice that much.

Mr. Hair: That is all.

The Court: You may be excused.

(Witness excused.)

Mr. Baird: Your Honor, that is all of the evidence we [552] have this afternoon. As I have indicated to the Court in chambers we have another witness who has been unable to be here today because of illness.

The Court: To what would he testify?

Mr. Baird: Something with reference to the development of the property in that area since 1943 and we may decide not to call him at all.

The Court: Don't you feel that you have pretty well covered that field?

Mr. Baird: We may decide to rest that point on the testimony that has been given by the witness who has just left the stand.

And then, if the Court please, and as I have stated before, we will probably have two or possibly three schedules which we will have to compile over the week end.

The Court: That can be submitted at any time.

Mr. Chase: If your Honor please, I am advised that the witness that we have subpoenaed will not

be available until Monday at 9 o'clock and I expect that we will be able to finish with the rest of the witnesses that we have for this afternoon but we would have to ask the Court's permission to bring this one witness in at 9 o'clock, Monday morning.

Mr. Baird, wouldn't this be a convenient time to get in the returns. Do you want to stipulate?

Mr. Baird: Yes, certainly. [553]

The Court: What time did you say that you had to leave, Mr. Sullivan?

Mr. Sullivan: I would like to go in a few minutes.

The Court: I think it might take you a good while for that bunch that you have there.

Mr. Sullivan: They are stamped together and with one writing the exhibit letter and the other putting them in I think we can get through them rather quickly. Some of them are stapled together and are rather thick and will be only one exhibit.

The Court: Very well. You may proceed.

Mr. Sullivan: I will use the term Palos Verdes to refer to Palos Verdes Estates, Inc., and the term American Pipe to refer to American Pipe and Steel Corporation.

The Court: You need not repeat what they are at this time.

Mr. Sullivan: As long as you think it will not be necessary.

The Court: Give the name and the year.

Mr. Sullivan: Yes, thank you, your Honor.

I offer the income, the Palos Verdes income re-

turn form 1120 for the fiscal year ended February 28, 1943.

The Court: Respondent's Exhibit H in evidence.

(The document above referred to was marked for identification as Respondent's Exhibit H and received in evidence.) [554]

Mr. Sullivan: Palos Verdes income tax return form 1120 for the period March 1, 1943, through December 2, 1943.

The Court: Respondent's Exhibit I in evidence.

(The document above referred to was marked for identification as Respondent's Exhibit I and received in evidence.)

Mr. Sullivan: American Pipe income tax return——

The Court: Are all of these income tax returns?

Mr. Sullivan: Unless otherwise specified.

Mr. Sullivan: American Pipe income tax return form 1120 for the calendar year 1940.

The Court: Respondent's Exhibit J in evidence.

(The document above referred to was marked for identification as Respondent's Exhibit J and received in evidence.)

Mr. Sullivan: American Pipe income tax return form 1120 for the calendar year 1941.

The Court: That will be Exhibit K.

(The document above referred to was marked for identification as Respondent's Exhibit K and received in evidence.

Mr. Sullivan: American Pipe income and excess profits tax returns forms 1120 and 1121 for the calendar year 1942.

The Court: That will be Exhibit L.

(The document above referred to was marked for identification as Respondent's Exhibit L and received in evidence.) [555]

Mr. Sullivan: American Pipe income tax and excess profits tax returns, forms 1120 and 1121, for the calendar year 1943.

The Court: Exhibit M in evidence.

Mr. Sullivan: American Pipe income tax and excess profits tax returns, forms No. 1120 and 1121 for the calendar year 1944.

The Court: Exhibit N in evidence.

Mr. Sullivan: There should be added to that last Exhibit N the statement that that was a consolidated return.

The next is a separate declared value, excess profits tax return of American Pipe for the calendar year 1944.

The Court: That will be Exhibit O.

Mr. Sullivan: American Pipe consolidated income and excess profits tax returns, forms 1120 and 1121, for the calendar year 1945.

The Court: Exhibit P in evidence.

Mr. Sullivan: American Pipe separate declared value excess profits tax return for the calendar year 1945.

The Court: Exhibit Q.

(The documents above referred to were marked for identification as Respondent's Exhibits M, N, O, P and Q, and received in evidence.)

Mr. Sullivan: Palos Verdes separate declared value excess profits tax return for the calendar year 1945. [556]

The Court: That will be Exhibit R.

Mr. Sullivan: American Pipe consolidated income tax return form 1120 for the calendar year 1946.

The Court: Exhibit S in evidence.

(The documents above referred to were marked for identification as Respondent's Exhibits R and S and received in evidence.)

Mr. Sullivan: That completes Respondent's Exhibits of returns.

Mr. Chase: Mr. Baird, as I understand it, you have rested with the exception of a possible witness?

Mr. Baird: If you will pardon me just a moment while I confer with my associates.

Mr. Chase: Very well, of course.

Mr. Baird: Mr. Chase, we have nothing further at the moment. We may want to offer some documents here Monday.

Mr. Chase: I was just inquiring. I will call my first witness.

Whereupon,

WILFORD G. EDLING

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your full name and address?

The Witness: Wilford G. Edling. [557]

The Clerk: How do you spell that?

The Witness: E-d-l-i-n-g.

Direct Examination

By Mr. Chase:

Q. Mr. Edling, you are a certified public accountant? A. Yes, sir.

Q. And are you a member of an accounting firm? A. Yes, Edling, Hightower and Hunt.

Q. Did you, during 1942, perform any audit or do any audits for American Pipe and Steel Corporation?

A. We prepared an audit report for the twelfth month ended June 30, 1942. However, that was not the fiscal year of the company.

Q. Were you regularly employed during that period as their auditors? A. We were.

Mr. Chase: Will you mark this, please?

The Clerk: Respondent's Exhibit T, for identification.

(The document above referred to was marked for identification as Respondent's Exhibit T.)

Q. (By Mr. Chase): I might ask, Mr. Edling,

(Testimony of Wilford G. Edling.)

preliminary, are you acquainted with Roy W. Burton?

A. I recall of only meeting him on one [558] occasion.

Q. Mr. Edling, I hand you what has been identified as Respondent's Exhibit T and ask you if you can identify the signature on there as yours?

A. That is my signature.

Q. And what is the date of this?

A. It is identified as August 15, 1942.

Q. Will you read for the record what that memorandum says?

Mr. Baird: Just a minute. May we see it?

Mr. Chase: I don't think it is necessary, this is my witness and I am not cross-examining one of yours.

Mr. Baird: Well, but you are asking him about something before it is in evidence.

Mr. Chase: Well, Mr. Edling, you identified that as your signature, did you not?

The Witness: Yes.

Mr. Chase: Then I will offer it in evidence.

Mr. Baird: Well, may we see it?

Mr. Chase: Yes.

Mr. Baird: No objection.

The Court: Are you now offering it?

Mr. Chase: I am now offering it in evidence.

The Court: Exhibit T received in evidence.

(The document heretofore marked for identification as Respondent's Exhibit T was received in evidence.) [559]

(Testimony of Wilford G. Edling.)

Q. (By Mr. Chase): Now, Mr. Edling, it says "Received of Roy W. Burton, proposed stipulation re trust No. WA-155 Palos Verdes project prepared by George M. Thompson, also folder file of Palos Verdes Estates of 2-28-42, and Union Bank Trustee return of foreclosure sale."

Mr. Edling, I will ask you why you would have received those files from Mr. Burton?

A. I can't recall any reason for receiving or for having received them unless somebody asked me to pick them up for them as a favor.

Q. And who would direct you to pick those up?

A. The only person I could think of would be Mr. Lane of American Pipe and Steel.

Mr. Chase: I have no further questions.

Mr. Baird: May we see the exhibit, please?

Cross-Examination

By Mr. Hair:

Q. Mr. Edling, I show you again Respondent's Exhibit T which you have identified as bearing your signature. I believe that it has been stated that that purports to be a receipt given to Roy W. Burton for certain papers or documents. Is that receipt written in your handwriting? A. No.

Q. Is there more than one handwriting on that document? [560]

A. There appears to be.

Q. And neither of those handwritings are yours?

A. No.

(Testimony of Wilford G. Edling.)

Q. And the only part that can actually be identified is your own signature?

A. That is right.

Q. Do you have any definite——

Mr. Chase: Well, Mr. Hair, if you are impugning the integrity of the government counsel, we will be glad to produce Mr. Burton. Are you trying to say that we altered this in any way?

Mr. Hair: I am just trying to see what Mr. Edling knew about it.

Mr. Chase: He testified that he doesn't remember the circumstances.

Q. (By Mr. Hair): And, Mr. Edling, you do not remember any circumstances about this thing?

A. No, I do not.

Q. Are you positive in your own mind that this receipt was given to Mr. Burton for documents which Mr. Jack Lane had requested you to obtain?

A. The only thing I can remember is having gone to Mr. Burton's office and picked up some papers, but I now could not say except for reference to that paper if that is the receipt [561] that I signed on that date or that that was the date that I went to his office. I had never met Mr. Burton before to the best of my knowledge and I have never seen him since.

Mr. Hair: No more questions.

The Court: Anything more, Mr. Chase?

(Testimony of Wilford G. Edling.)

Redirect Examination

By Mr. Chase:

Q. Mr. Edling, have you ever or did you subsequent to the time American Pipe and Steel Corporation acquired Palos Verdes Estates perform audit work on Palos Verdes books or did your firm perform any such services? A. Yes.

Mr. Chase: That is all.

(Witness excused.) [562]

Whereupon,

ORVILLE R. VAUGHN

called as a witness for and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name and address for the record.

The Witness: Orville R. Vaughn, 582 Market Street, San Francisco, California.

Direct Examination

By Mr. Chase:

Q. Mr. Vaughn, you are acquainted with Charles S. Howard, Sr., are you not? A. Yes.

Q. By the way, what is your profession, sir?

A. I am a lawyer.

Q. Did you represent Mr. Howard, Sr., personally for a number of years?

A. For more than 30 years, yes.

(Testimony of Orville R. Vaughn.)

Q. Were you and are you now a director or officer of the Charles S. Howard Foundation?

A. Secretary-treasurer and have been since the organization.

Q. And when was it organized?

A. In July, 1923. [563]

Q. Did the Charles S. Howard Foundation own any stocks or bonds in the Palos Verdes Estates, Incorporated?

A. In either, either in the late 1920's, that is, or early 1930's, it bought 500 par value of their bonds. Later in a reorganization the bonds were exchanged for the $5,000 par value, the par value of the bonds were exchanged for 60 shares of the preferred stock which had a par value, as I remember, of $100 a share.

Q. Was that preferred stock sold by the Howard Foundation?

A. Yes, we sold it, delivered the stock in September of 1943. It was not paid for until after the end of the year. Sold it for $2 a share which gave a selling price of $120 less commission and postage and insurance, I guess, of $3, got a net of $117.

Q. When were you first approached with an offer—first, let me say this: Mr. Vaughn, do you recall these events, any events occurring about the time of the sale of this stock; do you recall the circumstances of the sale? A. Well——

Q. If you have an independent recollection of them?

A. Well, I wrote Mr. Howard a memorandum.

(Testimony of Orville R. Vaughn.)

Q. Do you have any recollection yourself?

A. Well, very little, because, except as refreshed by these memorandum that I have. [564]

Q. What was your normal method of communicating with Mr. Howard on matters of the foundation?

A. With reference to matters of the foundation and all other matters of the Howard companies if I had something that I wasn't sure how he wanted me to handle it, I wrote him a memorandum and he would either write on the bottom what I should do about it or throw it in the wastebasket if he didn't agree with it.

Q. Mr. Vaughn, do you recall how you were approached to sell this stock; did you receive any letters soliciting the sale of the stock?

A. I don't think I received any letters. They would be in the file if I had received any.

Q. And you received no letters? A. No.

Q. Do you recall how you were approached to sell this stock?

A. I don't know how I was approached, but my understanding was——

Mr. Baird: Just a moment——

Mr. Chase: Now, Mr. Baird——

Mr. Baird: Wait just a minute please. I am being bedevilled from two sides here. Could I have the question read? I was starting to make some sort of an objection when all of this confusion [565] started.

(The question was read by the Reporter.)

(Testimony of Orville R. Vaughn.)

Mr. Baird: Before that question is answered, I would like to say that I want an opportunity to interpose an objection because his understanding might be entirely immaterial and irrelevant and in no way binding on any parties to this litigation unless some further foundation is laid.

Mr. Chase: I am attempting to do that.

Mr. Baird: I think it would have to be done before he expresses his understanding.

Q. (By Mr. Chase): The answer to that is that you do not recall the circumstances?

A. I do not recall the circumstances.

Q. Now, do you have any recollection of how you were approached?

A. No, I don't have any recollection of how I was approached.

Q. Or when you were approached?

A. Must have been in February, '43.

Q. Are you referring to a memorandum that you have before you? A. Yes.

Q. Can you tell us the date of that memorandum? A. February 1, 1943.

Q. Would that have been prepared on or about the date [566] on which any information therein had been given to you?

A. Yes, probably immediately.

Q. Probably immediately?

A. Or soon after I had the information.

Q. Have you refreshed your recollection from this memorandum? A. Yes.

(Testimony of Orville R. Vaughn.)

Q. Can you testify then from your own knowledge rather than what the memorandum states?

A. No, I can't remember from my own knowledge because that has been 11 years ago. We have had one world war and police action that lasted about three years, and a lot of water has gone under the bridge since then. I can't remember how I was approached.

Q. The memorandum itself does not refresh your recollection so that you could say precisely how you were approached?

A. No, I couldn't say whether I was called on the telephone or somebody came to see me, but I didn't get any letters.

Q. Do you have that memorandum?

A. Yes.

Mr. Chase: Will you mark this, please?

The Clerk: Respondent's Exhibit U marked for identification.

(The document above referred to was marked for identification as Respondent's [567] Exhibit U.)

Mr. Chase: Your Honor, I have had marked for identification Respondent's Exhibit U. At this time, I am going to offer it in evidence.

Mr. Baird: May we see it?

Your Honor, may I be permitted to ask the witness a question?

The Court: Go ahead.

Mr. Baird: In this memorandum dated Feb-

(Testimony of Orville R. Vaughn.)

ruary 1, 1943, Mr. Vaughn, reference is made to a man by the name of R. P. Archer; do you know Mr. Archer?

The Witness: No. If I ever met him, I wouldn't know him now. I don't recall whether I ever met him or not.

Mr. Baird: And, consequently, you don't know whether you ever talked to him?

The Witness: No. Somebody got in touch with me. I don't know how.

Mr. Baird: And you testified that you received no letters?

The Witness: No letters.

Mr. Baird: And you don't know whether your information came by telephone or personally?

The Witness: Or personally.

Mr. Baird: And you are telling us now that you don't know whether it was Mr. Archer that gave you the information or someone else? [568]

The Witness: No.

Mr. Baird: We submit there is absolutely no foundation laid for the introduction of this memorandum at all. The witness says he has no independent recollection and we submit that it be presented to the Court so the Court can rule on it.

Mr. Chase: Your Honor, the witness has testified that he made the memorandum and that he usually made memoranda when he received the information. Also that the memorandum does not refresh his recollection and he has no independent recollection as to having read this.

(Testimony of Orville R. Vaughn.)

Now, it is my understanding that when the witness testifies that he has no independent recollection but he does have a memorandum which he made at the time, the memorandum itself is admissible in evidence.

Mr. Baird: Your Honor, that memorandum is nothing but an unsupported and unsubstantiated conclusion. Granting and assuming, and I don't mean in any way to state that the witness is not speaking correctly when he says that is a memorandum he made. As I understand it, that is a memorandum that you made, Mr. Vaughn?

The Witness: That I made.

Mr. Baird: There is no question about that?

The Witness: No question about that.

Mr. Baird: Well, we will take that as being the fact as far as that goes. But the memorandum shows on its [569] face that it is his conclusion about something somebody by the name of Archer has said. He cannot testify and does not say that he ever talked to Mr. Archer. Furthermore, if he had, it would, in no way, be binding, what Mr. Archer would say would not be binding on the American Pipe and Steel Corporation or upon Mr. Lane in any way.

The Court: I will sustain the objection.

Mr. Chase: On what basis, your Honor—that there has been no foundation laid?

The Court: That is the first thing.

Mr. Baird: I may add that is hearsay at best of the rankest kind.

(Testimony of Orville R. Vaughn.)

The Court: It is entirely possible that it is something he found in his files that he knows that he dictated.

Would you so testify?

The Witness: Oh, yes, I would testify to that.

Mr. Baird: I think there is no question about that. Mr. Vaughn says that it is a memorandum he prepared and we would accept that as being a fact. But that still does not qualify this memorandum as being something admissible here because the memorandum on its face shows that it is simply a memorandum about some conclusion that he got from some source. It may have come from three or four steps removed and it might be hearsay four or five steps removed. He doesn't say in the memorandum that he talked to Mr. Archer and [570] doesn't testify he ever saw him; in fact, he says he doesn't know he ever saw him.

Mr. Chase: Your Honor, if the witness had the recollection which was refreshed by the memorandum, then the memorandum would not be admissible. We would examine him on his memory as refreshed by the memorandum. The witness states he has no recollection. All we could do would be to ask him to read it which would not be proper either. Now, under your Honor's ruling, the witness is prevented from testifying.

This is a memorandum——

The Court: I understand that, but in my 28 years next week on the bench, I have never en-

(Testimony of Orville R. Vaughn.)

countered this particular problem in just this form. Can you give me some authorities?

Mr. Chase: Yes, your Honor, yes, I can, if you will pardon my brashness, I recently completed a refresher course for the California Bar, which I have taken, and I will be glad to submit authorities. If you want to hold this matter until then or do it on brief, I am sure that it is a point of evidence which could be covered on brief and would shorten immeasurably the trial and we could excuse Mr. Vaughn almost immediately instead of having him stay around and see or until we see if it is admissible.

Mr. Baird: I think if Mr. Vaughn could be interrogated about something else, I certainly do not think it [571] necessary to keep Mr. Vaughn here until this is determined. He has identified the document and we are not questioning the authenticity of the memorandum. But I do object to the matter being held over for discussion on briefs.

If Mr. Chase wants to submit a memorandum here Monday in support of that, we would be here prepared to argue with him about it because I think I have some elemental knowledge of the rule in these circumstances, and I don't know of any basis under which it would be admissible.

Mr. Chase: If I might be heard, your Honor, before you speak again. Mr. Baird has admitted the authenticity of this document. It is under those very circumstances which documents were admitted over the Respondent's objection by Mr. Baird.

And when the document is apparently and, even

(Testimony of Orville R. Vaughn.)

according to Mr. Baird's statement, has been established as authentic, it is admissible, I think.

Mr. Baird: When I said it is authentic, I mean that I am not accepting precisely what the witness, Mr. Vaughn, has said; I mean I am accepting precisely what the witness has said—namely, that it is a memorandum which he wrote at or about the time of the date of the memorandum.

Now, I have no reason in the world to doubt Mr. Vaughn in that respect. And it is authentic to that extent or in that respect, and nothing further. [572]

The Court: Will you submit your authorities?

Mr. Chase: Yes, your Honor.

May I have this marked for identification?

The Clerk: Respondent's Exhibit V marked for identification.

(The document above referred to was marked for identification as Respondent's Exhibit V.)

Mr. Chase: This, Mr. Baird, will stand or fall on the same grounds; it contains about the same information.

I might ask one more question of Mr. Vaughn.

Q. (By Mr. Chase): The Howard Foundation sold its stock, as you have already testified?

A. Yes. September 19, 1943; it appears on the audit report as an account receivable from Dean Witter and Company, and the audit report of December 31 in 1943, but not paid for, however, until early 1944.

Mr. Chase: I believe that is all unless Mr. Baird has some cross-examination.

Mr. Baird: No, I have no cross-examination.

The Court: You may be excused.

(Witness excused.) [573]

Mr. Chase: Your Honor, I anticipate this next witness will run beyond 4:30 and possibly later. Do you have any objection to running beyond the time?

The Court: I was going to suggest that.

Mr. Chase: Very well. I will call Mr. Haggott.

Whereupon,

BENJAMIN B. HAGGOTT

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your full name and address?

The Witness: Benjamin B. Haggott.

The Clerk: How do you spell that?

The Witness: H-a-g-g-o-t-t. My residence address is 23250 Robert Road, Torrance, California.

Direct Examination

By Mr. Chase:

Q. Mr. Haggott, you were president of Palos Verdes Estates, Inc., prior to its acquisition by American Pipe and Steel Corporation in 1943, were you not?

A. Yes, I was president from 1938 until the time of my resignation.

(Testimony of Benjamin B. Haggott.)

Q. Can you state generally what the financial condition of Palos Verdes Estates was in the early part of 1942, or rather 1941 and 1942? [574]

A. It was in poor financial condition in my opinion, in poor financial condition.

Q. And you so indicated to the stockholders, did you not? A. Yes.

Q. And that situation had existed for how long?

A. It existed when I assumed the presidency.

Q. And that was sometime in 1938?

A. Oh, I think it existed prior to that, the poor financial condition, is that what you mean?

Q. Yes, and you say it had existed before. Now, let me ask you this: Was that in existence when you became president and as you said that was sometime in 1938? A. Yes, sir,

Mr. Chase: I would like to have this identified, please.

The Clerk: Respondent's Exhibit W for identification.

(The document above referred to was marked for identification as Respondent's Exhibit W.)

Q. (By Mr. Chase): I hand you Mr. Haggott, Respondent's Exhibit W for identification and will ask you if that bears your signature?

A. Yes, that is my signature.

Mr. Baird: No objection.

Mr. Chase: I will offer it in evidence.

The Court: It will be received. [575]

(Testimony of Benjamin B. Haggott.)

(The document heretofore marked for identification as Respondent's Exhibit W was received in evidence.)

Q. (By Mr. Chase): How many officers or how many employees did Palos Verdes Estates, Inc. have in 1942?

A. Well, I think we had a secretary, a lady secretary and a bookkeeper, I think they were both on a part-time basis.

Q. Did you employ any real estate salesmen?

A. We had—I do not think we had a sales force or anyone that you might say was an employee. I think we offered the property for sale to brokers and any broker could work on it that was licensed as a real estate broker on a commission basis.

You know, like any broker that was licensed under California law as a real estate broker could have worked on our property and we would have been happy to have them sell it.

Q. Did you try to sell any real estate yourself?

A. Yes.

Q. What time in 1942 did you first talk to Mr. Archer, that is Mr. R. P. Archer, about his purchasing the stock in Palos Verdes Estates, Inc.?

A. I couldn't tell you. I just don't know when that would have been.

Q. You could not fix a date? [576]

A. No I couldn't.

Q. Did you make any effort to interest other people in acquiring the stock of Palos Verdes corporation in, say 1941 or 1942?

(Testimony of Benjamin B. Haggott.)

A. I don't recall having done that. I think that my efforts had been more directed towards sale of land, to sell the land in total or part and the other assets of the corporation.

Q. Do you recall approaching any person or corporation and trying to interest them in the purchase of Palos Verdes Estates corporation?

A. You mean the land?

Q. Well, the land or the stock of Palos Verdes Estates.

A. Well, I do recall trying to sell the land, yes, but I can't tell you exactly the dates, but over an extended period of time I devoted quite a bit of my efforts to that.

Q. Did you ever try to sell the stock?

A. I don't recall having tried to do that.

Q. You mean you don't remember whether you did or not? A. That is right.

Q. Does the name Kenney Iron Works refresh your recollection?

A. Well, you asked me that out in the hall, Mr. Chase, and I told you I truthfully do not recall any conversations with Kenny Iron Works. [577]

Q. You mean they did not occur or that you just can't remember?

A. I just don't recall any such.

Q. Are you acquainted with Mr. Guy Witter?

A. Yes.

Q. Who is Mr. Witter?

A. Mr. Witter is associated with or is probably a partner of the firm of Dean Witter Company.

(Testimony of Benjamin B. Haggott.)

Q. Do you recall a conversation with Mr. Witter on or about May 27, 1942; did you ever go to Mr. Witter's office during 1942 or meet him socially?

A. Oh, frequently.

Q. You went to his office frequently?

A. Yes.

Q. What was your purpose in doing that?

A. Well, Mr. Witter was one of the directors of the Palos Verdes Estates, Inc.

Q. At this time in 1942?

A. Well, I think so.

Q. Or had you been a director prior to that?

A. Well, I don't know. It was that date that he was no longer director.

Q. Is that how you first met Mr. Witter when he was serving in his capacity as director?

A. That is right. [578]

Q. Do you recall going to—strike that.

Did you consult him from time to time about the policies of Palos Verdes Estates, that is during 1942?

A. Oh, yes, I felt, I think we both felt that the condition of the company was so stringent that I consulted with him, yes.

Q. Do you recall mentioning to him that you had talked——

Mr. Baird: Just a minute.

Mr. Chase: I am trying to refresh this witness' recollection, Mr. Baird.

Mr. Baird: Go ahead and finish.

(Testimony of Benjamin B. Haggott.)

Mr. Chase: Is there anything objectionable about that?

Mr. Baird: I am certainly going to object to this witness relating conversations with somebody by the name of Dean Witter.

The Court: State the question.

Q. (By Mr. Chase): Do you recall discussing with Mr. Witter on or about May 27, 1942, do you recall a conversation you had—strike that.

Mr. Haggott, do you recall discussing with Mr. Witter on or about May 27, 1942, conversations you had had with the Kenney Iron Works in relation to the acquisition to the stock of Palos Verdes Estates, Inc.? [579]

Mr. Baird: We object to that as being immaterial and irrelevant, and if the witness is permitted to answer it would be hearsay and would not be binding in any way on the American Pipe and Steel Corporation or Mr. Lane or any participants in this law suit.

Mr. Chase: Mr. Haggott figured quite prominently in the testimony of Mr. Archer in this case and Respondent is only trying to develop the facts, what the facts were and the circumstances under which Mr. Archer and Mr. Haggott conceived the idea of the sale of this stock to Mr. Archer, and I think it is relevant.

The Court: I will sustain the objection.

Q. (By Mr. Chase): Now, Mr. Haggott, did you suggest or did you discuss with Mr. Witter, with Mr. Guy Witter, the fact that Palos Verdes

(Testimony of Benjamin B. Haggott.)

Estates would be an attractive, or would be attractive to a defense corporation because of its large invested capital?

Mr. Baird: That is objected to as being immaterial and objected to for the same reasons as stated before.

The Court: What was Mr. Haggott's position at the time?

Mr. Chase: He was president of the Palos Verdes Estates, Inc., at the time he met Mr. Archer and at this time that I am asking him about.

The Court: I reverse my former ruling. He may answer. [580]

Mr. Baird: May I be heard?

Of course, I do not want to argue after the Court has ruled but I certainly want to make our position clear. We are in a situation now where Mr. Haggott is being asked whether or not he went to a man by the name of Mr. Guy Witter, a man who is in no way connected with this proceeding and has no interest in either of the corporations involved and made certain recommendations to Mr. Witter. I say that those recommendations could not be material here and they could not be binding on these people. Mr. Witter has not been called here as a witness and how could the recommendation that Mr. Haggott, if he made one, be material to anything that has taken place in this proceeding?

The Court: He may answer.

Mr. Chase: Will you answer the question or do you remember the question?

The Witness: Would you refresh my memory?

(Testimony of Benjamin B. Haggott.)

Mr. Chase: Will you please read the question?

(The question was read by the Reporter.)

The Witness: Well, I don't recall having done so.

Q. (By Mr. Chase): Well, are you saying that it did not happen or you just don't remember?

A. I am saying that I don't remember; I don't remember any such discussion. [581]

Q. Now, previously I had asked and the Court has indicated that he reversed his ruling, did you have any discussion with Mr. Witter about the Kenney Iron Works being interested in acquiring the stock of Palos Verdes Estates?

Mr. Baird: We interpose the same objection for the purpose of the record as made before.

Mr. Chase: Your Honor, I understood——

The Court: What connection did Kenney Iron Works have?

Mr. Chase: It was a defense plant.

The Court: No connection with Petitioners?

Mr. Chase: No. It had no connection with the Petitioners.

The Court: How would that be pertinent?

Mr. Chase: I am laying the basis, if I cannot refresh this man's recollection, I am laying the basis for further testimony and I believe it will be shown that Mr. Haggott actually had discussions or stated that he had discussions with the Kenney Iron Works, a defense plant with large war contracts and large profits in trying to interest them in the sale

(Testimony of Benjamin B. Haggott.)

of Palos Verdes stock and I think it is relevant in the issues and the circumstances under which Mr. Archer purchased the stock of Palos Verdes Estates.

Mr. Baird: If your Honor please, I don't see how it could possibly be relevant even if he testified that he had such [582] a conversation how could it be relevant with reference to Kenney Iron Works if counsel admits that there is no connection with Petitioners.

The Court: I will sustain the objection.

Q. (By Mr. Chase): Mr. Haggott, did you suggest to Mr. Witter, Mr. Guy Witter, that he try to find a buyer for the stock of Palos Verdes corporation?

A. Mr. Chase, I certainly don't want to give the appearance of trying not to be as helpful as I possibly can, but I plain don't remember any such conversation that might have taken place at that time. I just plain don't.

Q. Now, if Mr. Witter stated that you had those conversations, he would not be lying, would he?

Mr. Baird: We submit, your Honor, that that is argumentative.

The Court: Are you objecting?

Mr. Baird: Yes, I certainly am, if the Court please.

The Court: Objection is sustained.

Mr. Chase: If the Court please, we have two documents which Mr. Baird has no objection to. There is a question however in my mind whether one is not already in evidence. We would like to

(Testimony of Benjamin B. Haggott.)

have them marked for identification subject to verification.

The Clerk: Respondent's Exhibits X and Y for [583] identification.

Mr. Baird: No objection.

(The documents above referred to were marked for identification as Respondent's Exhibits X and Y.)

Mr. Chase: Would you also mark this, please?

The Clerk: Respondent's Exhibit Z for identification.

(The document above referred to was marked for identification as Respondent's Exhibit Z.)

Q. (By Mr. Haggott): Mr. Haggott, I hand you this document which has been identified and ask if that is your signature? A. Yes.

Q. And there is an attachment to the exhibit, a letter of September 26, 1942, to a Professor J. E. Boodin and that is unsigned. The letter refers or says: "Enclosed also is copy of letter to one of our stockholders, Professor Boodin, dated September 26, 1942."

Is this letter a copy of the letter to which you refer?

A. Well, I am sure it must be if you got it from the Corporation Commissioner's Office, I would assume that it was.

Mr. Chase: I will offer it in evidence.

Mr. Baird: No objection.

(Testimony of Benjamin B. Haggott.)

The Court: Exhibit Z in evidence. [584]

(The document heretofore marked for identification as Respondent's Exhibit Z was received in evidence.)

Mr. Chase: Your Honor, this is a letter from the Corporation Commissioner's file and I would like to have permission to withdraw it subject to substituting a photostatic copy.

The Court: You may do that with reference to any exhibit that you want to.

Mr. Chase: Thank you.

I have no further questions.

Cross-Examination

By Mr. Baird:

Q. Mr. Haggott, may I ask just one or two questions about the sale of stock?

During the time you were president and you became president I believe in February of 1938, and what was the stock of Palos Verdes Estates selling for?

A. Well, I don't recall what it was selling for at that time but I know in one of these letters that you have here that I mentioned that at some time prior to writing the letter that I said that it had been selling for 25 cents to 45 cents on the dollar, so if I said that, I am sure that was correct if I said that in the letter.

Mr. Baird: I think that is all. [585]

Mr. Chase: No further questions.

The Court: You are excused.

(Witness excused.)

Mr. Baird: Counsel has handed me a group of letters that I would like an opportunity to examine.

The Court: Do you have any more witnesses?

Mr. Chase: I have none at this time, your Honor, but, as I stated before, I have one more for Monday morning.

Mr. Baird: Mr. Chase, in order to save time could we defer this until Monday?

Mr. Chase: I thought if the Court would not mind that we could settle this and I was going to see if these can be admitted.

The Court: I think we should get as much behind us as possible.

Mr. Baird: Of course, I would like to do what the Court wishes but I have been presented with a group of one, two, three, four, five letters which Mr. Chase assures me came from the Corporation Commissioner's files.

Mr. Chase: They bear the letter stamp of the Commissioner's office.

Mr. Baird: Upon counsel's statement that they came from the file, I am going to raise no objection to them on that ground. But they may be objectionable for other reasons and I would like an opportunity to read them and they are rather lengthy, [586] they are several pages long and we could do it over the week end and I think that we would save more time than by sitting down and doing it now.

Mr. Chase: I wanted to offer them as part of the official file of the Corporation Commissioner's office file and there is a letter to the Corporation Commissioner and his reply to that letter which concerns the sale of stock of Palos Verdes Estates.

The Court: The first letter is by whom?

Mr. Chase: The first letter is addressed to the Commissioner.

The Court: By whom?

Mr. Chase: By a woman by the name of Katherine Schwartz of La Jolla, one of the stockholders, directing inquiry to the Commissioner about the sale of stock. The rest of the letters are part of the official correspondence answering her inquiry concerning the sale.

Now, the Corporation Commissioner of California is charged with restrictions or administering the blue sky laws of California in the sale of securities.

Mr. Baird: May I say this so there will be no misunderstanding: While we are admitting upon Mr. Chase's statement to us that these are letters from the Corporation Commissioner's files, I want to be clearly understood that we do not admit that these are in the same category as official [587] records which the Clerk or Recorder or some official of the State is required to keep. It is correspondence coming into various deputies in the office and is certainly subject to all of the rules of evidence about hearsay that every other document is and it may be that we would want an opportunity to cross-examine the deputy doing the writing or on the other hand

after we have had an opportunity to read them we may have no objection at all.

Mr. Chase: I might say that the deputy concerned is now deceased. You gave Mr. Maiden your assurance that you would not, or we would not be required to have the officials produced.

Mr. Baird: Just a moment. I told Mr. Maiden that I would not require him to bring someone from the Commissioner's office to identify the documents as documents of that office upon his statement that they came from that source, that I would accept that as true and I am willing to do that and I accept Mr. Chase's statement. But that does not mean that I am going to waive all of the rules of evidence with reference to them.

The Court: What would be the advantage of having them admitted now?

Mr. Chase: I was just trying to save time but if you want to wait that is perfectly all right.

The Court: Well, we want to give Mr. Baird an [588] opportunity to read them.

Mr. Chase: Well, let me give you copies. I have photostatic copies of all of those.

The Court: Is there anything else?

Mr. Chase: I have nothing more with the exception of this witness that I would like permission to call at 9 o'clock Monday morning.

The Court: Very well. We will recess until 9 o'clock tomorrow morning.

(Whereupon, at 5 o'clock p.m., the hearing was recessed, to be reconvened at 9 o'clock a.m., Monday, June 7, 1954.) [589]

The Court: On the record?

Mr. Chase: I believe the first order of business this morning was, you requested a memorandum on the admissibility of certain evidence. Would you wish to consider that in open court or in chambers? I think we can probably do more there.

I was talking to the Judge on the admissibility of this memorandum.

Mr. Baird: I think it should be in the record. We can go into chambers, but let's take the Reporter.

The Court: Put it on the record.

You are the moving party.

Mr. Chase: I am the moving party, your Honor.

If your Honor please, I don't have a written memorandum. I didn't have secretarial help over the week end. However, I have with me Wigmore on Evidence, and Wigmore devotes considerable amount of material——

The Court: Bear in mind that Wigmore offers on both sides of the question.

Mr. Chase: Yes, I agree with you. However, on this particular question Wigmore makes the statement that it cannot be doubted that——

Well, let me start it this way:

Wigmore differentiates between past [593] recollection recorded and present recollection revived. The second, present recollection revived, presents a situation where the witness has refreshed his recollection from a written memorandum prepared at the time, and has a refreshed recollection. He can say "Yes, I now remember these events."

The Court: That is not the case here.

Mr. Chase: That is right. The second is past recollection recorded. Wigmore says this is the situation:

"The situation is one in which the witness is devoid of a present recollection and therefore desires to use a past recollection. Thus, he says, 'I made a correct memorandum of this conversation while my recollection was fresh. I now remember nothing.'"

The Court: The witness doesn't say that here.

Mr. Chase: The witness said he prepared that memorandum on or about the time of that date.

The Court: Proceed.

Mr. Chase: Well, he says, "I made a correct memorandum of the conversation while my recollection was fresh. I now remember nothing, but can offer my prior recollection as embodied in the memorandum."

That is Section 734 of Wigmore on Evidence.

He says in Section 736, "It cannot be doubted that the use of a recorded past recollection now occupies a firm and unassailable place in all practice and doctrine." [594]

Now, it cites any number of cases, and the docket part is up to date to 1935. This occupies quite a number of pages. There are three requirements, well, preliminary to the use of the past recollection recorded—that the witness have no recollection, that is, this memorandum doesn't refresh his recollection.

Now, the first requirement is that the recollection must have been fairly fresh when recorded.

Now, Mr. Vaughn, I am sure the record will show this, testified that he prepared that on or about the time when it was dated.

Then the witness must verify the memorandum as having been prepared by him.

The Court: Did the present situation satisfy that?

Mr. Chase: I am certain Mr. Vaughn testified that he prepared that personally, and that came from his file. It seems to me that the record will show that there is a correct foundation laid for admitting this in evidence, and I would like——

The Court: What is the third?

Mr. Chase: The third is that the original be produced, and that is what Mr. Vaughn has produced, the original from his file.

Now, there is another ground for admission of this, your Honor, under the Federal Business Records Act. [595]

Mr. Archer testified that he personally contacted some of the shareholders. Mr. Vaughn testified that he had had no written communication of any kind, or it would have been in the file. The memorandum was the normal means of communicating with Mr. Howard. Mr. Howard would either, as he said, throw them in the wastebasket or note his views on them and return them to Mr. Vaughn. Mr. Vaughn was secretary-treasurer of the Howard Foundation, which owned some of this stock, and the stock was sold to Mr. Archer. Mr. Vaughn testified to that.

Now, this is Section 1732 of Title 28 of U. S. Code Annotated and it is the record made in the regular

course of business, the Federal Business Records Act.

"In any court of the United States and in any court established by act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible as evidence of such act, transaction, occurrence or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence or event or within a reasonable time thereafter.

"All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances [596] shall not affect its admissibility. The term 'business' as used in this section includes business, profession, occupation or calling of any kind."

The Court: What is that number?

Mr. Chase: Section 1723.

I have nothing further.

The Court: We will hear from Mr. Baird.

Mr. Baird: May it please the Court, I think it would be well, before we discuss the cases and the section of the statute to which Mr. Chase has referred, to refresh our recollection as to what took place here. I have a transcript of Mr. Vaughn's testimony, and that resolves itself down to this. I am going to read two or three pertinent excerpts from that.

Mr. Chase: I don't have a copy of the transcript.

Mr. Baird: You may have mine and stand here, and I will make mine available to you.

I am reading now from page 3.

"Question: Mr. Vaughn, do you recall how you were approached to sell this stock; did you receive any letters soliciting the sale of the stock?

"Answer: I don't think I received any letters. They would be in the file if I had received any.

"Question: And you received no letters?

"Answer: No. [597]

"Question: Do you recall how you were approached to sell this stock?

"Answer: I don't know how I was approached, but my understanding was——

"Mr. Baird: Wait just a minute, please. I am being bedevilled from two sides here. Could I have the question read? I was starting to make some sort of an objection when all of this confusion started."

Now, skipping down a page or two—a line or two—I asked Mr. Chase the following question:

"Mr. Baird: I think it would have to be done before he expresses his understanding.

"By Mr. Chase:

"Question: The answer to that is that you do not recall the circumstances?

"Answer: I do not recall the circumstances.

"Question: Now, do you have any recollection of how you were approached?

"Answer: No, I don't have any recollection of how I was approached.

"Question: Or when you were approached?

"Answer: Must have been in February '43.

"Question: Are you referring to a memorandum that you have before you?

"Answer: Yes. [598]

"Question: Can you tell us the date of that memorandum?

"Answer: February 1, 1943.

"Question: Would that have been prepared on or about the date on which any information therein had been given to you?

"Answer: Yes, probably immediately.

"Question: Probably immediately?

"Answer: Or soon after I had the information.

"Question: Have you refreshed your recollection from this memorandum?

"Answer: Yes.

"Question: Can you testify then from your own knowledge rather than what the memorandum states?

"Answer: No, I can't remember from my own knowledge because that has been 11 years ago. We have had one world war and police action that lasted about three years, and a lot of water has gone under the bridge since then. I can't remember how I was approached.

"Question: The memorandum itself does not refresh your recollection so that you could say precisely how you were approached?

"Answer: No, I couldn't say whether I was called on the telephone or somebody came to see me, but I didn't get any letters." [599]

I want to pause at this place and impress upon

the Court the circumstance, that the witness on the stand and the witness in his memorandum doesn't identify the party from whom he got the information.

Now, skipping over some immaterial things, we come over to the next page.

"Mr. Baird: In this memorandum dated February 1, 1943, Mr. Vaughn, reference is made to a man by the name of R. P. Archer; do you know Mr. Archer?

"The Witness: No. If I ever met him, I wouldn't know him now. I don't recall whether I ever met him or not.

"Mr. Baird: And, consequently, you don't know whether you ever talked to him?

"The Witness: No. Somebody got in touch with me. I don't know how.

"Mr. Baird: And you testified that you received no letters?

"The Witness: No letters.

"Mr. Baird: And you don't know whether your information came by telephone or personally?

"The Witness: Or personally.

"Mr. Baird: And you are telling us now that you don't know whether it was Mr. Archer that gave you the information or someone else? [600]

"The Witness: No."

The rest of that is argument mostly.

Mr. Chase: I think it states in here——

Mr. Baird: May I finish and then you may have my transcript there, and I will be glad to hear you when I get through.

With reference to Section 1793, as has been set forth by Mr. Chase and reported in United States Code Annotated, Title 28, that is, of course, the Business Records Section. I mean it is commonly referred to as that section. And it is the successor of Section 695, and I may say that Section 695 hasn't been changed in any material respect insofar as it relates to our problem here.

There have been some additions later on so as to clarify the use of microfilm and photostatic records of that kind, such as a large organization, a bank or a brokerage house, would commonly use.

The Court: What was that old number?

Mr. Baird: The old number is 695.

Now, Section 695 came in—and the history all shows that; Wigmore and all of the writers on evidence—and the cases themselves show that Section 695 came in because of the fact that, under our old common law rule, it was necessary to bring the particular person who made the entry in the book, and [601] that made it—in our modern way and the system of doing business—has made it impossible to get book entries into evidence because, as we know, all our large financial concerns now use machine bookkeeping, and many bookkeepers may work on the same particular documents on the same particular transaction. That is all that Section 695 and 1723 was designed to accomplish. It is limited strictly to matters in the regular course of business, and the regular course of business has been interpreted by the Supreme Court of the United States in a decision to which I will refer in a moment, as being

those records of financial transactions such as ledgers, journals and documents of that kind, that is, official records. It is not designed to and was not intended to cover the whole process of letters and memoranda that might be written with reference to a particular event.

Now, may I call your Honor's attention to the fact—something of course which I know your Honor is well familiar with—that in this little book, which I admit is not authority, but I am relying upon the authority which it recites:

"Procedure and Practice Before the Tax Court of the United States"——

——the 1954 edition, commenting upon this rule——.

The Court: Who was the author?

Mr. Baird: This is a Commerce Clearing House publication. I don't think it says who the author was. Might [602] have been Bob Ash. He does some writing for Commerce Clearing House. I am not sure, and I don't find it in the books.

This statement is made, and it is referring to Section 320 of that book, and the book to which I am referring is "Procedure and Practice Before the Tax Court of the United States, 12th Edition," and Section 320 on page 142 relates to the admissibility in evidence of writings and records made in the regular course of business,

Now, the concluding paragraph, "The mere fact that the paper offered in evidence is taken from a business file or is otherwise in compliance with the law doesn't establish its competency," and that

refers to the case of Shelmer versus U. S., an Ohio Circuit Court case, C.C.A. in Ohio, 1944, case, relatively new, 143 Fed. 2d 544.

Now, let's see just briefly what the Court had before it in that instance and what it said. Commenting on this Section 695, 1732, the new section came in a year or so later, the Court had this to say——

The Court: Speaking through whom?

Mr. Baird: Circuit Judge Allen.

The Court: Sixth Circuit?

Mr. Baird: Sixth Circuit. Judge Allen, in this opinion, which was a unanimous opinion, I believe, makes this observation:

"As to certain of these documents, now a mass of some [603] 46 documents was admitted in evidence, upon the theory that they constituted documents kept in the regular course of business"—if I may impose on the Court—I will go back even a paragraph further, and a more difficult question is presented by the contention that the Court committed prejudicial error in its instructions to the jury on the evidence.

The Court admitted Exhibits 1 to 46 en masse, some unsigned; and our document here is unsigned; some containing hearsay; our document here contains hearsay, taken from the files of and kept in regular course of business by the foundry company, and stated to have been made or presumably to have been made at or about the time of the transactions to which they refer.

The Court: Did I understand you to say that the document is unsigned in this case?

Mr. Baird: That is correct, your Honor. It is unsigned. But I will say in all fairness to counsel that the witness has identified it as something that was made——

The Court: Doesn't it bear on its face——

Mr. Chase: It bears the initials "O.R.V."

Mr. Baird: It is simply a carbon of something that was sent to Mr. Howard. It is not even the original, so far as that is concerned.

The Court: Proceed.

Mr. Baird: Continuing, the Court said—and this is [604] Judge Allen of the Circuit Court—"They were admitted as falling within the purview of Section 695, Title 28, U.S.C.—28 U.S.C.A, Section 695." Now, that is the section to which Mr. Chase is referring. It is now Section 1732. "The purpose of the enactment of Section 695 was to eliminate the technical requirement of proving the authenticity of business records and memoranda by the testimony of the maker," citing Landy versus the United States, another Sixth Circuit case.

This language of the Court is extremely important. "The mere fact that the paper offered in evidence is taken from a business file, and is otherwise proved in compliance with Section 695, doesn't establish its competency. It is questionable whether all the papers offered in evidence in this mass of exhibits were made as memoranda or records. It is also questionable whether all of the matters to which they related were relevant."

Section 695 in no way repealed the ordinary requirements of relevancy and competency. The Dis-

trict Court should have examined and ruled upon each paper separately and should have excluded the hearsay and other incompetent evidence.",

I submit that in this case we have the rankest kind of hearsay. We have a document which is unsigned. We have a document in which the witness says in the document itself—or doesn't say in the document itself to whom he talked. He doesn't say what the name of the corporation was to [605] which reference was made, and on the witness stand he testified that he doesn't know R. P. Archer, that he doesn't know whether he ever saw him, that he doesn't know whether he ever talked to him. He doesn't know who he talked to.

In other words, the only conclusion that we can get from this government's proposed Exhibit C is that there was found a memorandum in the file of the Charles C. Howard Foundation, dated February 1, 1913, and all the witness can say is that, "That is a memorandum that I prepared at or about that time." But he doesn't say in that memorandum, and he didn't say on the witness stand, that he got this information from R. P. Archer, nor does he say that he got it from anybody representing the American Pipe and Steel Company; nor does he say that he had any contact with any of those people.

So, I submit, your Honor, that it is hearsay of the rankest kind, probably three or four times removed.

In closing, may I call your Honor's attention to the observation made by Justice Douglas in the case of Palmer versus Hoffman. That is a United States

Supreme Court case. And, for the purpose of the record, that case is cited in 63 Supreme Court at 477, 318 U.S., 109 and 87th Law Edition at 645. That is a 1943 case, and the decision is by Justice Douglas.

Now, the decision is rather lengthy and it involves other things in which we are not here concerned. For that reason [606] I am only going to take an excerpt or two which I think is pertinent to what we have to say.

This question of a memorandum which was made by an engineer with reference to an accident that occurred in which someone was killed or seriously injured, and made at the time—and made pursuant to the custom of the railroad involved—was offered in evidence, and the question was whether or not it was something kept in the regular course of business or something that should be admitted under this Section 695 to which we have referred.

Justice Douglas said, "But the fact that a company makes a business out of recording its employees' versions of their accidents doesn't put those statements in the class of records made in the regular course of business within the meaning of the act. If it did, then any law office in the land could follow the same course, since business, as defined in the Act, includes the professions. We would then have a real perversion of a rule designed to facilitate admission of the records, which experience has shown to be quite trustworthy.

"Any business, by installing a regular system for recording and preserving its versions of accidents

for which it was potentially liable, could qualify those reports under the Act. The result would be that the accident, and the Act is referring to Section 695, would cover any system of reporting events or occurrences, providing it with regular, and though it [607] had little or nothing to do with the management or operation of the business as such.

"Preparation of cases for trial by virtue of being a business or incidental thereto would obtain the benefits of this liberalized version of the early shop book rule. The probable trustworthiness of records because they were routine reflections of the day-to-day operations of a business would be forgotten as the basis of the rule."

He cites some cases.

"Regularity of the preparation would become the test, rather than the character of the records, and their earmark of reliability. In the Chesapeake and Canal versus the United States, acquired from their source and origin, and the nature of their compilation"—I didn't read that correctly. He cited that case as support for the statement that he just made.

Now, continuing—and this is the pertinent part of this decision, so far as our problem here is concerned—"We"—the "we" refers to the Supreme Court of the United States—"cannot so completely empty the words of the Act of their historic meaning if the Act is to be extended to apply, not only to a regular course of a business, but also to any regular course of conduct which may have some relationship to business; Congress, not this Court, must extend it. Such a major change which opens

wide the door to avoidance of cross-examination should not be left to implication. Nor is it any [608] answer to say that Congress has provided in the Act that the various circumstances of the making of the record should affect its weight and not its admissibility. That provision comes into practice only in case the other requirements of the Act are met."

Now, while my associate is finding another authority for me, I do want to comment on this. I don't know under what theory Mr. Chase is proposing to offer this. I presume that it may be in the nature of impeachment of the witness Archer. And I submit, if the Court please, that if that is the theory upon which this is offered, then it is inadmissible, because no proper foundation was laid. Archer was never asked about any such transaction. He was not asked whether he ever talked to Mr. Vaughn or whether he had any connection or contact with the Charles Howard Foundation.

The matter was not pinpointed for it as to time, place, circumstance. And if it is an impeaching procedure that our distinguished counsel for the government is embarking upon, then the foundation has not been laid.

I am referring now to the Encyclopedia of Federal Procedure, Third Edition, Volume 8, "The Rules of Civil Procedure make no reference to the practice of refreshing the memory of witnesses by the use of memoranda, but the spirit of Rule 43, which seems to require following either the Federal precedents or the rule of the state in which the court sits, [609] whichever is the more liberal."

Now, with reference to our California law, if that has any effect here——

The Court: How would that have any effect?

Mr. Baird: We do have, if the Court is interested in it, the California Code Sections, the California cases on this particular subject. And I only referred to that because——

The Court: It would be interesting to hear what the California law is.

Mr. Baird: May I proceed then?

The Court: Yes.

Mr. Baird: I am referring now to the Code of Civil Procedure and Evidence, and Section 2047, the headnote, "When witness may refresh memory from notes. Production and use of writing, testimony in the absence of recollection."

Now, the section itself reads: "A witness is allowed to refresh his memory respecting a fact by anything written by himself or under his direction at the time when the fact occurred or immediately thereafter, or at any other time when the fact was fresh in his memory, and he knew that the same was correctly stated in the writing.

But in such case the writing must be produced and may be seen by the adverse party who may, if he chooses, cross-examine the witness upon it, and may read it to the jury. So also a witness may testify from such a writing, though he retains [610] no recollection of the particular facts, but such evidence must be received with caution."

Now, we find in the footnote in the annotation this

summary, which is rather short. With the Court's permission, I will read it:

"The general rule that a memorandum used by a witness to refresh his recollection cannot be read in evidence and is not admissible as evidence to the jury seems to me embodied in this section which, after providing that the adverse party may read it to the jury, provides that the witness may testify from it, though he retains no recollection of the particular facts." Citing the case of Reid versus Reid, an early California case, "A witness using a memorandum to refresh his memory cannot read it to the jury, nor can it be admitted as evidence to the jury in any sense." That, by the way, is a Ninth Circuit case. Generally notes or memorandum made by a witness are not admissible on direct examination, citing the case of People versus Dekert, cited in 246 Pacific, 557.

I am now referring to a late case of the California Supreme or Appellate Court, and I think it is our Supreme Court. The case of Daut versus Daut, and that is, by the way, the District Court of Appeals of the Third District of California. That is a 1950 case, and that is cited 220 Pacific—if your Honor please, I looked on the wrong page as to the [611] number of the case. The case is Hawkins versus Sanguinetti. It is a District Court of Appeals, Third District, and it is cited in 220 Pacific Reporter 2d Series at page 58.

Now, the Court has this to say:

"Subject to the provisions of Section 2407 of the Code of Civil Procedure," which is the section of

the California Code to which I have just referred, "it is proper to allow a witness to refresh his memory by exhibiting to him any writing coming within the provisions of said section. However, in no sense were the affidavits herein question testimony such as appellate contends would warrant their introduction into evidence. It should further be noted, as is also provided in said section, that it is only the adverse party, if he should so choose, who may treat the writing as evidence. The reasons for the rule is distinctly stated in the Parker case Supra 164 California at page 530, where the Court observed that, to permit this to be done by the party producing the witness, would open the door to the admission of hearsay and manufactured evidence without limit."

Now, that is our situation here. We are the adverse parties in this case. Under these rules, as set forth here by these decisions, we are the ones who can offer that document if we should choose to offer it, not government counsel, who calls the witness, who says he doesn't know anything about it and doesn't know to whom he talked or where he got his information. [612]

We submit, your Honor, that the document is inadmissible from any standpoint. It contains conclusions of the witness. It contains hearsay. It doesn't on its face identify the American Pipe and Steel or anyone connected with it. It doesn't on its face state that the information came from Mr. Walker. The witness said he didn't know whether he got the information from the telephone or by a

a personal call or where he got it. We submit it is inadmissible.

Mr. Chase: I would like to read the portion of the transcript that says, "Question: What was your normal method of communicating with Mr. Howard on matters of the Foundation?

"Answer: With reference to matters of the Foundation and all other matters of the Howard companies, if I had something that I wasn't sure how he wanted me to handle it, I wrote him a memorandum, and he would either write on the bottom what I should do about it or throw it in the wastebasket if he didn't agree with it.

If that isn't a memorandum made in the regular course of business, your Honor, we submit——

The Court: On what theory do you offer this?

Mr. Chase: Mr. Baird took the position that no foundation had been laid for its use as impeaching evidence. I submit the record will show that Mr. Archer was questioned specifically, if he told Mr. Vaughn, Mr. Orville R. Vaughn of San Francisco, that he represented a corporation of war [613] contracts, and that the purpose of the acquisition was for the favorable tax benefits which would accrue. Now, Mr. Archer was a witness in this case and, furthermore, he was employed by American Pipe and Steel by their own admission; and there is no question that Mr. Archer acquired all of this stock, or that Mr. Archer didn't talk to these people. He said he contacted the stockholders. Under those circumstances, the memorandum is admissible as impeaching evidence without regard——

The Court: How are you offering it? On what basis?

Mr. Chase: As impeaching evidence, your Honor.

Mr. Baird: Before your Honor rules on that, may I ask that the Court refer to the document so as to be absolutely clear that there is nothing in this document that says that Mr. Archer said anything to anybody?

Mr. Chase: Mr. Vaughn testified he had no recollection, Mr. Baird.

Mr. Baird: The document itself doesn't say.

The Court: Just a moment.

Mr. Chase: There is another basis, your Honor, for the admission, and that is as an admission of Mr. Archer's——

The Court: I don't follow you.

Mr. Chase: Well, a well recognized exception to the hearsay rule is an admission——

The Court: Against interest?

Mr. Chase: No; not only an admission against interest, [614] but—well, it would be an admission against interest, yes, or an admission of a fact by a party——

The Court: How could a man who had no connection with the company admit against interest? I am speaking of Dean Witter.

Mr. Chase: This isn't that. The statement to Mr. Vaughn is that an admission by Mr. Archer——

Mr. Baird: If I may interrupt at this point, I want to challenge that statement as emphatically as I can. There is nothing in this document, government's exhibit here, that says that Mr. Vaughn

ever saw Mr. Archer. The document doesn't say that Mr. Archer was talked to. The document doesn't say anything about a conference or conversation between the witness Vaughn and R. P. Archer. On the contrary, if we read on down to the bottom of it, it would appear, if we may draw some inferences, that perhaps this information came from somebody by the name of Jean Witter. Jean Witter's name was mentioned in it. There is nothing in the document that says that Mr. Archer ever said anything.

The Court: Anything further to say?

Mr. Baird: Incidentally, the record shows he was not employed by American Pipe and Steel at that time.

The Court: I sustain the objection.

Mr. Chase: Then, your Honor, we would like to offer these to be marked and made a part of the record, and we are [615] making an offer of proof of the documents.

The Court: You may do so.

Mr. Chase: We want them marked so they will be a part of the record.

The Court: They will be retained by the Court.

Mr. Baird: If your Honor please, in order that there will be no misunderstanding in the transcript, when the transcript is being considered perhaps some three months later, may it clearly show that this is merely an offer of proof on the part of government counsel?

The Court: That is the way we understand it.

Mr. Chase: That is to be understood.

I have one more witness.

The Court: You wish to make a formal tender of proof to complete the record?

Mr. Chase: Well, let the record show that the goverment has offered two memoranda, one dated February 1, 1943, and one dated September 20, 1943, both from the files of Orville R. Vaughn, who was called as a witness by the respondent.

The Court: You wish to say for what purpose you are offering that?

Mr. Chase: The offer is made for the purpose of establishing, well, one, as impeaching the testimony of Mr. R. P. Archer; and, second, as an admission by Mr. R. P. Archer [616] of the facts stated in the memorandum.

The Court: Very well. Is there anything further in this case this morning?

Mr. Chase: Yes; I have one more witness. I would like permission to talk with him for about five minutes. I have not yet had a chance to interview him.

Mr. Baird: If your Honor please, we have one witness who will be very short. I wonder if we could put him on now and let him go.

The Court: We will first call the calendar of cases set for this morning. We will suspend in this case.

(Recess.)

The Court: We will continue.

Whereupon,

GUY WITTER

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name and address for the record?

The Witness: Guy Witter.

Direct Examination

By Mr. Chase:

Q. Will you state what if any connection or official position you had with Palos Verdes Estates, Inc., at any time? [617]

A. I was a director of Palos Verdes Estates and also a member of the voting trustees.

Mr. Baird: May we have the time, please?

Mr. Chase: Yes.

Q. (By Mr. Chase): Would you fix that time? Would you tell us during what period?

A. Well, the way I happened to become connected with it was the bond issue outstanding that defaulted in 1932. I became a member of the Bondholders Protective Committee. The bond issue was foreclosed in 1935, and from that time until 1942 I was a member of the—well, first, the bondholders Protective Committee, and then later on director of Palos Verdes Estates, Inc.

Q. How late in 1942 were you a director?

A. I resigned as a director in April, 1942.

Q. And when did you cease to be a voting trustee?

(Testimony of Guy Witter.)

A. I indicated at the same time I wanted to resign from that, but action wasn't actually taken until October, 1942.

Q. Now, in your capacity as a director of Palos Verdes, you were acquainted with Mr. Ben Haggott? A. Yes.

Q. He was the president? A. Yes.

Q. And were you also acquainted with a Mr. Roy Burton? [618] A. Yes.

Q. Could you tell us what position he occupied?

A. He made two or three audits of the books of Palos Verdes Estates for the Bondholders Protective Committee.

Q. Do you know whether or not he was employed as an auditor for Palos Verdes regularly?

A. I think he was, but I am not sure.

Q. Now, did Mr. Ben Haggott consult with you from time to time during the years preceding 1942 and in 1942 as to the affairs of Palos Verdes Estates, Inc.? A. Yes.

Q. Did he do that frequently?

A. No. Up until 1939 or '40, he conferred with me frequently. After 1940, he did not.

Q. Now, did Mr. Haggott ever talk to you about plans to sell the stock of Palos Verdes Estates, Inc.?

A. Yes.

Mr. Baird: Let's not lead the witness, Mr. Chase.

Q. (By Mr. Chase): Will you tell us whether you had any conversations with Mr. Haggott concerning the sale of the stock of Palos Verdes?

A. Yes.

(Testimony of Guy Witter.)

Q. Can you relate those conversations?

A. No. [619]

Q. Can you relate any particular conversation?

A. No.

Q. Did you ever prepare any memorandum relating to these conversations? A. Yes.

Q. Have you refreshed your recollection from this memorandum?

A. Yes; I have looked through the file.

Q. Well, can you tell us anything about a conversation with Mr. Haggott on or about May 27, 1942?

Mr. Baird: Just a moment, if your Honor please. May I inquire, is the witness now testifying from a memorandum which he is using to refresh his recollection, or what is the situation?

Mr. Chase: I will attempt to establish that, Mr. Baird.

Mr. Baird: I would like to have it established before we go any further, because if that is what is taking place, then I submit that we are entitled to see the memorandum and to interrogate Mr. Witter as to when it was made, and the circumstances.

Q. (By Mr. Chase): Mr. Witter, are you testifying now from a memorandum?

A. I have a memorandum before me that I dictated on May 27, 1942. [620]

Q. It is dated May 27, 1942? A. Yes.

Q. And it was dictated by you? A. Yes.

(Testimony of Guy Witter.)

The Court: Does it refresh your recollection? Does it give you an independent recollection?

The Witness: If it hadn't been for this memorandum, I wouldn't have remembered the conversation.

The Court: But, on seeing the memorandum, do you recall the conversation?

The Witness: I know I had the conversation. I dictated the memorandum, evidently, just a day or two after I had seen Mr. Haggott.

The Court: Proceed.

Q. (By Mr. Chase): Mr. Witter, can you give us the substance of that conversation with Mr. Haggott?

Mr. Baird: May I see the memorandum?

Mr. Chase: I have no objection.

Mr. Baird: After examining this memorandum, keeping in mind that Mr. Witter has testified under oath that he has no independent recollection, if I understand you correctly, Mr. Witter—I don't want to misstate your testimony—but my understanding is that without this memorandum you would not be able to testify. [621]

Now, I would like for the Court to inspect this memorandum, and upon inspection I am sure the Court will find there is nothing in it that in any way refers to any principal in this case or to any witness in this case, other than the witness Haggott, who has been a government witness and who has been on the stand. There is no mention made of American Pipe and Steel, no mention made of Mr.

(Testimony of Guy Witter.)

Archer, a witness who was on the stand. It is hearsay and conclusions of the rankest kind.

The Court: Proceed.

Q. (By Mr. Chase): At this time, Mr. Wittèr, I will ask you to give us the substance of that conversation with Mr. Haggott?

Mr. Baird: We object to that question on the grounds it is immaterial and irrelevant. It is in no way binding on any of the parties to this litigation, and there has been no foundation laid for that sort of a question.

The Court: You may proceed.

Q. (By Mr. Chase): Will you give us the substance of the conversation now, Mr. Witter?

A. Well, after reading this memorandum, the substance is this——

Mr. Baird: Mr. Witter, can you tell us now without reading it from the memorandum? Do you have any independent recollection now about it? [622]

The Witness: I wouldn't have had unless I had read this memorandum. I can't remember twelve years back. For ten years we were juggling with this thing, and we had all sorts of conversations.

The Court: Having refreshed your recollection by having seen the memorandum, does the picture come back to you?

Q. (By Mr. Chase): Do you remember having a conversation with Mr. Haggott?

A. I know I had it, yes. I wouldn't have dictated the memorandum otherwise.

Mr. Chase: I submit, your Honor, under that

(Testimony of Guy Witter.)

circumstance the witness should be permitted to testify to the substance of the conversation.

Mr. Baird: Assuming that that is correct, that doesn't mean that the witness is permitted to sit on the stand and read the memorandum.

Mr. Chase. Mr. Baird will have an opportunity for cross-examination.

The Court: You may proceed.

Q. (By Mr. Chase): You may proceed, Mr. Witter.

A. Well, may I say this: That this Palos Verdes thing was divided into several steps. After we foreclosed the bond issue in 1935, we made every effort to liquidate that property [623] to pay off the former bondholders. During the thirties that was a difficult matter. We sold some of the estate, but not a great deal.

The next step was that we offered the former bondholders the opportunity to come in and take the property down there, the individual lots, in payment of their bonds.

The next step after that was, we held an auction, trying to dispose of the property to pay off the taxes, indebtedness that had been incurred.

Mr. Baird: What was the date of that, please? Can you give us the date of the auction?

The Witness: It was in 1939, I believe, 1939 or '40. We were under pressure all the time, because taxes were continuing to accrue against this property, and there had been a moratorium on the state foreclosing for those taxes. But we were told in '39

(Testimony of Guy Witter.)

or '40 that they were going to foreclose, so we were trying to get anything we could to salvage for the bondholders, former bondholders, prior to the testimony that the State stepped in and took the whole works away from us.

After the auction we felt that we had done everything we could, and the only recourse left to us was to try and find a buyer for the property. We chased after two or three different situations there. Haggott was chasing after them, I should say, as president of the corporation.

This particular memorandum refers to a conversation [624] that Haggott had had with a representative of the Kenney Iron Works, whom he thought was interested in buying the corporation stock, preferred stock.

Mr. Baird: If the Court please, I do not know whether this is the proper time to state my position on that, but the witness has been giving us an interesting account of what took place, and I have had no objection up to this point. But now he is relating something which is clearly hearsay. In other words, he is telling what Mr. Haggott said about some information that he got from some other company, which is in no way related to our company at all.

It would be hearsay of the rankest kind, and is. And we object to this line of testimony for that reason.

Mr. Chase: I submit, your Honor, if the Petitioners' president is actively seeking to sell this stock—and I think it will be testified to, if the wit-

(Testimony of Guy Witter.)

ness is allowed to continue—that the reason he was trying to sell this to various organizations was for its attractive tax benefits. I submit, if he was actively seeking purchasers at that time, that that has relevance in this proceeding.

Mr. Baird: He was not the Petitioners' president at the time with which we are concerned. Mr. Haggott was not the Petitioners' president, after December, 1943; and furthermore, Mr. Haggott, government's witness, has testified on this stand that he has no recollection of having any conversation [625] about Kenney Iron Works.

The Court: He may answer.

Q. (By Mr. Chase): Will you continue giving us the substance of the conversation between you and Mr. Haggott?

A. Well, as far as I know, that was it. I mean, we weren't trying to find a buyer who was looking for anything to do with taxes. We didn't care who it was as long as he was a bona fide purchaser.

Q. Did Mr. Haggott state to you——

Mr. Baird: Don't lead the witness, please.

Q. (By Mr. Chase): Well, does the memorandum refresh your recollection as to why Mr. Haggott thought that the Kenney Iron Works would be interested in purchasing the stock of Palos Verdes Estates?

Mr. Baird: I object as incompetent and irrelevant.

The Court: Don't you think that is pretty far removed?

(Testimony of Guy Witter.)

Mr. Chase: Well, your Honor, I have read the memorandum. That is not the sole substance of the conversation; the portion related so far by Mr. Witter is not the sole substance as recorded in his memorandum, and I am only trying to help the witness refresh his recollection, which I think is perfectly proper.

Mr. Baird: The witness has already testified that he [626] has no recollection except as it is refreshed by this memorandum. Certainly he should be confined to this memorandum. Counsel is now trying to inject some extraneous matters.

The Court: Proceed.

Q. (By Mr. Chase): Do you remember my question?

(The question was read by the Reporter.)

Mr. Baird: We object to that as being irrelevant, and immaterial, and calling for a conclusion and calling for hearsay testimony of the rankest kind.

The Court: You may answer whether it gives you an independent recollection, the memorandum. You may answer whether or not the memorandum refreshes your recollection in that respect.

The Witness: I don't know how to answer that, because if I hadn't read the memorandum I am quite sure I wouldn't have remembered the conversation.

The Court: After reading the memorandum, do you remember?

The Witness: Oh, yes, I know I had such a con-

(Testimony of Guy Witter.)

versation or I wouldn't have written this memorandum.

The Court: Is that the only basis for your memory?

The Witness: Yes.

The Court: It doesn't bring back the picture at that time when somebody talked with you? [627]

The Witness: No, your Honor. Over a ten-year period, we had hundreds of conversations. Even the last one was twelve years ago. I simply cannot remember back that far. The only thing that I can say is that I know I had such a conversation or this memorandum wouldn't have been written.

The Court: Let's see the memorandum.

He may answer the question that was stated.

Will you read the question again?

(The question was read by the Reporter.)

The Witness: Mr. Haggott said to me at the time that Kenney Iron Works had employed a man to look around for situations that might be helpful to them from a tax standpoint. Whether that was simply his opinion or whether he knew that to be the case is something I don't know.

Q. (By Mr. Chase): Did he say anything about the attractiveness of Palos Verdes from a tax standpoint?

A. Well, referring to the memorandum again, he said that the Kenney Iron Works were endeavoring to get a higher invested capital base.

(Testimony of Guy Witter.)

Q. Did he say that he had talked to the Kenney Iron Works? You have already testified to that.

A. No, he talked to someone that had been employed by the Kenney Iron Works.

Q. Well, did he say anything else about the attractiveness [628] of Palos Verdes Estates, Inc., from the standpoint of a favorable tax basis?

A. Again referring to the memorandum, he said that the Palos Verdes Estates, Inc., from an historical standpoint, had a substantial investment, invested capital—amount of invested capital.

Q. Did he say anything else?

A. No. Well, he went on to say that—no, that is all he said. The rest was mine.

Mr. Chase: I have no further questions.

Mr. Baird: May we have this memorandum marked as Petitioners' exhibit next in order?

The Court: Petitioners' exhibit?

Mr. Baird: Petitioners' exhibit; yes.

The Court: Petitioners' Exhibit 50, marked for identification.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 50.)

Cross-Examination

By Mr. Baird:

Q. If I understand your testimony correctly, you resigned as director of Palos Verdes Estates, Inc., in April, 1942? A. Yes, sir.

Q. And I believe that you stated that you had

(Testimony of Gay Witter.)

had many conversations with Mr. Ben Haggott between the period 1939, I [629] believe you said, and 1942, but that you had either no or relatively few conversations with him about Palos Verdes after your resignation?

A. Well, I had relatively few with him after 1940. At that time we felt that we had wound up our job for the bondholders, and, as a matter of fact, I should have resigned earlier than I did as a director.

Q. Your prime personal interest in this enterprise, if I understand you correctly, was that of a member of the Bondholders Committee, Protective Committee? A. That's right.

Q. And at or about that time some steps were taken by the management of Palos Verdes to transfer the interest of the bondholders into lots; am I correct in that?

A. No; that was prior to that time. It was along in '38, I believe, that we tried to get the former bondholders to take property for their bonds.

Q. Mr. Witter, on this conversation of May 27, 1942, you have no independent recollection of anything other than what you have in this memorandum, if I understand you correctly?

A. No; I don't remember anything else, anything about the conversation except what is in there.

Q. Do you remember whether or not Mr. Haggott said he had talked to someone in the Kenney Iron Works?

A. Well, only from that memorandum, referring

(Testimony of Guy Witter.)

to that [630] memorandum, he said that he had talked to a man that had been employed by the Kenney Iron Works.

Q. And the name of the man didn't sufficiently impress you; you did not put that in your memorandum?

A. I don't know whether he even mentioned it.

Q. You don't know whether he mentioned the man? A. No.

Q. You don't know whether the man had any connection with Mr. Jack Lane or American Pipe and Steel, or who he was?

A. No; I don't know.

Q. You don't know anything about it?

A. Nothing.

Q. So, is it a fair statement to say that your testimony must be limited entirely to the meeting of May 27, 1942?

A. Well, what I have said here, yes, is based on that memorandum.

Q. That is, so far as this conversation with Mr. Haggott is concerned? A. Yes.

Mr. Baird: Will your Honor pardon me just a moment?

That is all.

Mr. Chase: No further questions.

(Witness, excused.)

Mr. Chase: Your Honor, I have no more witnesses. At this time, I would like to offer [631] Respondent's Exhibits X and Y in evidence. They

were marked X and Y for identification. We now offer them in evidence.

Mr. Baird: No objection.

The Court: They will be received; X and Y.

(The documents heretofore marked for identification as Respondent's Exhibits X and Y were received in evidence.)

Mr. Chase: Will you mark that for identification, please?

The Court: AA.

(The document above referred to was marked for identification as Respondent's Exhibit AA.)

Mr. Chase: Respondent has had marked for identification AA, which consists of a letter to the State Comptroller of Corporations from Katherine Swartz, La Jolla, California.

The Court: Who was she?

Mr. Chase: She identifies herself in the letter, as a stockholder of Palos Verdes Estates. This is a letter of August 3, 1943. The second attachment——

Mr. Baird: May we take one at a time?

After this proposed exhibit——

Mr. Chase: Just a minute, Mr. Baird. I had them attached, the three letters, and we would like them all classified together.

The Court: Are you familiar with these [632] letters?

Mr. Baird: Yes.

The Court: Proceed with your offer.

Mr. Chase: The second attachment, Respondent's

Exhibit AA, is a transmittal letter from Sacramento to the Corporation Commissioner's Office here in Los Angeles. I should note that all of these documents are part of the Corporation Commissioner's files, and Mr. Baird has agreed to my making that statement.

The third attachment is a letter from the Deputy Corporation Commissioner to Miss Katherine Swartz in La Jolla, California.

The purpose of offering these letters is further impeachment evidence of Mr. Archer and also as an admission by Mr. Archer. I will hand the Court a copy.

At this time, I will offer them in evidence.

Mr. Baird: May it please the Court, I have examined these documents over the weekend. I agreed with Mr. Maiden, and I also agreed with Mr. Chasen that I would not require them to bring someone here from the Corporation Commissioner's Office to identify the letters as being letters in their file or copies of letters which were sent out by the Corporation Commissioner's Office.

But we object to the Exhibit AA, consisting of, I think, six letters. The exhibit, I am told, is confined to three letters. One is dated August 30, 1943, signed by someone [633] who signs her name Katherine Swartz, and the second one is dated September 3, 1943, by someone by the name of J. T. McMenamin, and it appears to be addressed to J. A. Hamm, Assistant Commissioner, Los Angeles, California.

The third letter is a letter addressed to Miss

Katherine Swartz, dated September 13, 1943, by someone who signs his name as A. S. Montague, Deputy. I assume that that is a deputy in the Office of the Corporation Commissioner's Office.

We have no particular objection to the letter of August 30, 1943, and the letter of September 3, 1943, although we think that they are immaterial and irrelevant, and we would make that objection to them.

As to the letter of September 13, 1943, that is objectionable from almost every standpoint, under the rules of evidence. In the first place, if it is offered as an impeachment document, no proper foundation is laid. Mr. Archer wasn't asked on the stand whether he had had any communication with the Corporation Commissioner's Office, and more particularly with a deputy by the name of A. S. Montague. Furthermore, the letter itself is replete with conclusions and hearsay. It doesn't mention either the American Pipe and Steel, nor does it mention Mr. Archer or anyone connected with him. This is a letter to Katherine Swartz, and I call the Court's attention to the last paragraph on page 2. "The attorney for the Bondholders [634] Committee informed me that he had no information at all as to the matter since the commencement of the present year. But the chairman of the committee informed me that Mr. Archer had now acquired more than 70 per cent of the outstanding stock, and that the articles of incorporation had been amended so as to make shares acceptable."

I notice that didn't come from Mr. Archer. This

Deputy Montague is writing to a Miss Swartz and telling her about information that he got from some third party. The letter is clearly hearsay from every standpoint; no proper foundation has been laid to be used for impeachment, and we object to it.

Mr. Chase: I believe Mr. Archer was asked on the stand whether he had ever had any contact with the chairman or attorney for the former Bondholders Committee, and as I remember, his statement was that he didn't remember. He was further asked if he had made the statement at any time as to whether he was acquiring this stock on behalf of a defense plant, which was desirous of obtaining the corporation for the tax benefits which would accrue. And he said that he never made that statement at any time.

Now, in addition to impeachment evidence, your Honor, it is also an admission by Mr. Archer, who was in the employ of American Pipe and Steel. That can't be disputed, that he was employed by American Steel at this time. [635]

Mr. Baird: If you are through, Mr. Chase, may I point out how strongly this letter indicates that it is in contravention of the hearsay rule, and I read paragraph—this is the letter written by A. S. Montague, a Deputy in the Corporation Commissioner's Office——

The Court: It isn't necessary. I sustain the objection.

Mr. Baird: Thank you.

Do you wish to separate the three letters?

Mr. Chase: No. We want to have it marked for

purposes of an offer of proof. At this time the Respondent wishes the record to show that the Respondent's Exhibit AA for identification was offered in evidence, and an exception is noted to the ruling of the Court sustaining the objection to its admission. The documents are offered as an admission of Mr. R. P. Archer.

The Court: Let the record show there were three letters incorporated in this proffer of proof, to two of which Mr. Baird, as counsel for Petitioner, had no objection. The third was the one to which he had an objection.

The Court: Is there anything further?

Mr. Chase: The Respondent has nothing further, your Honor.

Mr. Baird: We call Mr. Vieth, please. [636]

Whereupon,

JOHN VIETH

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name and address for the record?

The Witness: John Vieth, 660 South Spring Street.

Direct Examination

By Mr. Baird:

Q. What connection, if any, do you have with the Bank of America in Los Angeles?

A. Assistant cashier.

Q. And as such are you here in response to a

(Testimony of John Vieth.)

subpoena issued to you by this Court to produce the escrow records of the Bank in this proceeding?

A. Yes, sir.

Q. Have you examined this escrow file, the file which I am showing you, and can you tell us whether or not that is an escrow file between one R. P. Archer and the Bank of America, opened up on August 18, 1942?

A. Yes, sir. It is a complete file.

Q. And from your examination of the file, will you tell us whether or not that escrow was opened up in the name of R. P. Archer individually, or was it in his name as R. P. Archer, nominee? [637]

A. Individually.

Q. Will you refer to the first escrow instructions that you have in the file, referring to the escrow instructions of August 18, 1942? I will ask you if that is the first official document in the file?

A. Yes, sir.

Q. And by whom is that signed?

A. R. P. Archer.

Q. Directing your attention to the last paragraph. I will ask you what that reads?

A. "The undersigned hands you herewith the sum of $1,000, which you are to use upon additional written instructions from me. R. P. Archer."

Q. And that is signed "R. P. Archer." Now, did the escrow department of your bank subsequently receive some additional instructions from Mr. Archer?

(Testimony of John Vieth.)

A. All the instructions that we received are in this folder.

Q. I show you a document dated December 30, 1942, and addressed to the Bank of America, in re Escrow No. 221-5301, and ask you if that is the second instruction that your Escrow Department received? A. I presume so, sir.

Q. Have you examined the file and do you find any other instruction intervening between the one dated August 18, 1942, [638] and the one to which I am now directing your attention? A. No, sir.

Q. May I direct your attention to the signature page and ask if you will indicate to the Court how that was signed? A. "R. P. Archer."

Q. There is no indication or designation of anything other than "R. P. Archer"? A. No, sir.

Q. I will ask you if you have examined the file to see if there were any instructions subsequent to that and whether or not you found any in the file?

A. There is one dated January 14, 1943.

Q. That is in the same escrow, Escrow No. 221-5301? A. Yes, sir.

Q. That is addressed to your bank, the Bank of America? A. Right, sir.

Q. Directing your attention to the signature page on those escrow instructions, I will ask you by whom that was signed? A. R. P. Archer.

Q. And is there anything in the instruction itself or under the signature to indicate that the escrow was for anyone other than R. P. Archer individually? A. No, sir.

(Testimony of John Vieth.)

Q. Mr. Vieth, you have a considerable file here of [639] correspondence and so forth. Have you examined those documents? A. Yes, sir.

Q. Do you find from your examination that there is anything in there, in any of those documents, to indicate that Mr. Archer was acting in any capacity other than for himself?

A. For himself only, sir.

Q. Is this the complete file of the Escrow Department of the Bank of America in this transaction? A. Yes, sir.

Mr. Baird: While the witness is on the stand, we would like to offer the original escrow instructions of August 18, 1942, or else—I think I would have to do that; and also the modified instructions of December 30, 1942, and January 14, 1943, about which the witness has testified. And I may say to your Honor that these are the official files of the Bank, and I would like permission merely to have these marked for identification and then have them photostated, and substitute photostats.

Mr. Chase: May I examine them?

The Court: Do you propose to offer them in evidence?

Mr. Baird: Yes. They are offered only for the purpose of showing that the——

The Court: Your statement was that you would have them marked for identification. [640]

Mr. Baird: Perhaps counsel will not object to their going in evidence.

Mr. Chase: I want to look at them first.

(Testimony of John Vieth.)

Mr. Baird: I am offering them too for the limited purpose of showing that that escrow arrangement with the bank was one of R. P. Archer, and not R. P. Archer, nominee, or R. P. Archer, for someone else.

I am not interested in any of the schedules or instructions attached, unless Mr. Chase is.

Mr. Chase: I have no objection.

Mr. Baird: Government counsel has no objection, and we offer in evidence as Petitioners' Exhibit 51, the original escrow instructions, Escrow No. 221-5301, of the Bank of America.

The Court: They will be received.

Mr. Baird: Dated August 18, 1942, signed "R. P. Archer."

The Court: That will be received.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 51 and received in evidence.)

Mr. Baird: And the escrow instruction of December 30, 1942, relating to the same escrow, as Petitioners' Exhibit 52,

The Court: It will be received. [641]

(The document above referred to was marked for identification as Petitioners' Exhibit No. 52 and received in evidence.)

Mr. Baird: And the escrow instruction of January 14, 1943, to the Bank of America in this same escrow, Petitioners' Exhibit 53.

(Testimony of John Vieth.)

The Court: 53 is received.

(The document above referred to was marked for identification as Petitioners' Exhibit No. 53 and received in evidence.)

Mr. Baird: May I withdraw these immediately, your Honor, and substitute photostats?

The Court: You may do so.

Any further questions of the witness?

Mr. Baird: No; I am through.

The Court: Any questions, Mr. Chase?

Cross-Examination

By Mr. Chase:

Q. Were you employed by the Bank in 1942?

A. Yes, sir.

Q. At what branch?

A. 1942 at the Bank of America in Eagle Rock.

Q. Did you handle this escrow yourself?

A. No, sir.

Q. You were just summoned here to produce these records? [642] A. Right.

Q. You have no knowledge of anything relating to the terms of the escrow? A. No.

Mr. Chase: No further questions.

Mr. Baird: That is all.

The Court: You are excused.

(Witness excused.)

The Court: Anything else by either party?

Mr. Baird: Your Honor, pardon me just one moment?

The Court: Is there anything further on either side?

Mr. Baird: We have no witnesses. I think government counsel is through with their witnesses, but we do have a statement with reference to one or two schedules which we want to submit.

Mr. Chase, will you present that to the Court?

Mr. Chase: Yes. There are several schedules which the parties want to include as part of the record but which have not yet been completed. Mr. Baird and I will request permission of the Court to submit those as part of the record some time later when they are prepared.

The Court: How many of these will there be?

Mr. Baird: Well, so far as the Petitioner is concerned, there will be one schedule. And I will say to the Court that we hoped to have that ready this morning, but we did [643] not make it quite clear to the bookkeeping department of American Pipe and Steel as to what was needed, and they have brought in a voluminous schedule here which has involved work of many, many people over the weekend, but they have incorporated a lot of data that is not essential or material to our proceedings. Therefore, we would like to revise this and streamline it to the things that are pertinent.

The Court: How many will there be?

Mr. Baird: Only one schedule, or if we break it into two years, there will be two schedules. It is a matter that can be determined from the books

and which may be verified by the government agents, about which I am sure we will have no dispute.

I want to make this clear why we are doing this. Petitioners' Exhibit 31 was a schedule that was offered, showing the backlog of war contracts of American Pipe as of the end of 1943 of only $850, and then another exhibit, sometime later, the number of which I do not have, shows a backlog for 1944. Now, on cross-examination, government counsel brought out the fact that this schedule contained only information with reference to the prime contracts and doesn't include the subcontracts. I was not aware of that until that was brought out on the witness stand. So we desire to make the picture complete and to give a supplemental schedule showing the number and amount and volume of subcontracts, that is, war contracts; [644] which American Pipe and Steel Corporation had throughout the years 1943 and 1944. And that is what our schedule or schedules will relate to.

The Court: I will ask again, how many exhibits will there be?

Mr. Baird: Not more than two, if we break it into two years, it would be two. If we put the two years together, it will be one. I am speaking now of Petitioners' exhibit.

Mr. Chase: Respondent has one schedule, your Honor.

The Court: Permission is granted. I wish you would determine whether we are going to have one or two.

Mr. Baird: We will say two.

The Court: Exhibits 54 and 55 will be subsequently received, and Exhibit BB will be received.

(Petitioners' Exhibits Nos. 54 and 55, and Respondent's Exhibit BB were reserved for the documents above referred to.)

Mr. Baird: They will be received by stipulation of the parties; in other words, I will want an opportunity to see Mr. Chase's schedule, and he will want an opportunity to see mine.

The Court: Will you be able to file those while I am still here?

Mr. Baird: Yes.

Mr. Chase: The schedule which he is asking with respect [645] to is to be made up from the books of American Pipe and Steel.

The Court: Can you file them this week?

Mr. Baird: Yes; we can get the information for government counsel, and it can be verified by government agents.

The Court: Is the record now to be closed?

Mr. Chase: It is closed as far as the Respondent is concerned.

Mr. Baird: That is our case, your Honor.

The Court: I will give you 60 days for Petitioners' first brief, 45 days thereafter, after receipt of the Petitioners' brief for Respondent's brief, and 20 days for reply by Petitioner; 60, 45 and 20.

(Whereupon, at 12:05 o'clock p.m., the hearing in the above matter was closed.)

Filed: July 27, 1954; T.C.U.S.

United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 28539

AMERICAN PIPE AND STEEL CORPORATION, a Corporation,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court of Appeals, for the Ninth Circuit:

American Pipe and Steel Corporation hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on February 28, 1956, pursuant to its Findings of Fact and Opinion promulgated November 30, 1955 (25 T. C. No. 45) ordering and deciding: "That there are deficiencies in income and excess profit taxes due from petitioner for the years 1944, 1945 and 1946, as follows:

Year	Deficiency in Income Taxes	Deficiency in Excess Profits Taxes
1944	$23,504.02	$34,955.02
1945	17,753.50	84,299.14
1946	53,264.70"	

I.

Statement of Jurisdiction and Venue

Petitioner is a Nevada corporation with its principal office and place of business in Alhambra, California. Petitioner's consolidated tax returns for the taxable years 1944, 1945 and 1946 were filed with the Collector of Internal Revenue for the Sixth District of California at Los Angeles, California, which is located within the judicial circuit of the Court of Appeals for the Ninth Circuit, wherein this review is sought.

This petition for review is filed pursuant to the provisions of Sections 7482 and 7483 of the Internal Revenue Code of 1954.

II.

Nature of Controversy

The primary issue is whether the petitioner was entitled to file consolidated tax returns for the years 1944, 1945 and 1946, and to secure the benefits of such returns, by reason of the petitioner's acquisition and ownership of the entire capital stock of Palos Verdes Estates, Inc., a California corporation.

The respondent Commissioner contended that petitioner acquired control of Palos Verdes Estates, Inc., for the principal purpose of evading or avoiding income or excess profits taxes by securing the benefit of a deduction, credit, or other allowance which petitioner would not otherwise enjoy, within

the meaning of Section 129 of the Internal Revenue Code of 1939, as amended.

The Commissioner further determined that petitioner was not entitled to file consolidated income and excess profits tax returns as a member of an affiliated group within the meaning of Section 141 of the Internal Revenue Code of 1939.

Petitioner contends that the determinations of the Commissioner were and are erroneous; that it acquired control of Palos Verdes Estates, Inc., for business purposes, and not for the principal purpose of evading or avoiding income or excess profits taxes within the meaning of Section 129; and that petitioner was entitled to file consolidated tax returns for the years in question by virtue of said Section 141.

The Tax Court held that petitioner had not proved that the Commissioner's determinations were erroneous.

III.

Statement of Points

The petitioner on review makes this concise statement of points on which it intends to rely on the review herein, to wit:

The Tax Court of the United States erred:

1. In holding that there are deficiencies in income and excess profits taxes due from petitioner for the taxable years 1944, 1945 and 1946.

2. In holding that Section 129 of the Internal

Revenue Code of 1939, as amended, is applicable under the evidence herein.

3. In holding that the petitioner was not entitled to file consolidated tax returns, and to secure the benefits of such returns, pursuant to Section 141 of the Internal Revenue Code of 1939.

4. In holding that the petitioner had failed to prove that the determinations of deficiencies made by respondent Commissioner were erroneous.

5. In failing to hold or find that petitioner did not acquire the stock of Palos Verdes Estates, Inc., for the principal purpose of evading or avoiding Federal income or excess profits taxes within the meaning of Section 129 of the Internal Revenue Code of 1939, as amended.

6. In failing to make any findings of fact with regard to petitioner's intent and purpose in acquiring the stock of Palos Verdes Estates, Inc.

7. In that its findings of fact are not supported by substantial evidence or by the weight of the evidence, and are clearly erroneous.

8. In that its opinion and decision is contrary to law and the regulations and is not supported by the evidence or by the findings of fact.

IV.

The said American Pipe and Steel Corporation, being aggrieved by the findings of fact and conclusions of law contained in the said findings and opinion of the Court and by its decision entered pursuant thereto, desires to obtain a review thereof by the

United States Court of Appeals for the Ninth Circuit.

Dated: May 21, 1956.

/s/ M. MITCHELL BOURQUIN,

/s/ GEORGE DeLEW,

Attorneys for Petitioner.

Duly verified.

Filed May 22, 1956, T.C.U.S.

[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR REVIEW

To John P. Barnes, Chief Counsel, Internal Revenue Service, Washington, D. C.:

You Are Hereby Notified that American Pipe and Steel Corporation did, on the 22nd day of May, 1956, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of The Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated: May 22, 1956.

/s/ M. MITCHELL BOURQUIN,

/s/ GEORGE DeLEW,

Attorneys for Petitioner.

Received and filed May 23, 1956, T.C.U.S.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
City and County of San Francisco—ss.

Florence E. Cardon, being sworn, deposes and says: That she is a citizen of the United States, over the age of 18 years, and not a party to the within action; that affiant is employed in the city and county where the mailing hereinafter referred to occurred; that affiant's business address is 711 Crocker Building, San Francisco 4, California; that affiant served copies of the Notice of Filing Petition for Review, Petition for Review, and Designation of Contents of Record on Review herein by depositing the same on May 22, 1956, in the United States mail at San Francisco, California, addressed as follows:

John P. Barnes, Chief Counsel,
Internal Revenue Service,
Washington, D. C.

that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid, and that there is delivery service by United States mail at the place so addressed.

/s/ FLORENCE E. CARDON.

Subscribed and sworn to before me this 22nd day of May, 1956.

[Seal] /s/ GEORGIA M. JAY,
Notary Public in and for the City and County of San Francisco, State of California.

Received and filed May 23, 1956, T.C.U.S.

[Title of District Court and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 11, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Designation of Contents of Record on Review," excepting Joint Exhibits C-40, D-41, E-42 and F-43, Petitioner's Exhibits 2 thru 16, (17-M.F.I. and not left with the record), 18 & 19, 20 (formerly Respondent's B-M.F.I.), 21 thru 28, (29-M.F.I. and not left with the record), 30 thru 39, 44 thru 49, (50-M.F.I. and not left with the record), and 51 thru 53, No. 54 & No. 55 attached to Stipulation covering said exhibits, admitted in evidence; and Respondent's Exhibits G thru T, U & V, M.F.I., W thru Z, AA-M.F.I. and No. BB attached to Stipulation covering said exhibit, admitted in evidence, which are separately certified, in the proceeding before The Tax Court of the United States entitled: "American Pipe and Steel Corporation, Petitioner, vs. Commissioner of

Internal Revenue, Respondent, Docket No. 28539" and in which the Petitioner in The Tax Court proceeding has initiated an appeal as above-numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 12th day of June, 1956.

[Seal] /s/ HOWARD P. LOCKE,
Clerk, The Tax Court of the
United States.

[Endorsed]: No. 15174. United States Court of Appeals for the Ninth Circuit. American Pipe & Steel Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed June 26, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS

The petitioner on review makes this concise statement of points on which it intends to rely on the review herein, to wit:

The Tax Court of the United States erred:

1. In holding that there are deficiencies in income and excess profits taxes due from petitioner for the taxable years 1944, 1945, and 1946.

2. In holding that §129 of the Internal Revenue Code of 1939, as amended, is applicable under the evidence herein.

3. In holding that the petitioner was not entitled to file consolidated tax returns, and to secure the benefits of such returns, pursuant to §141 of the Internal Revenue Code of 1939.

4. In failing to find or determine that petitioner did not acquire the stock of Palos Verdes, Estates, Inc., for the principal purpose of evading or avoiding Federal income or excess profits taxes within the meaning of §129 of the Internal Revenue Code of 1939, as amended.

5. In failing to find or determine whether the acquisition of the stock of Palos Verdes Estates, Inc., by petitioner was or was not made for the principal purpose of evading or avoiding of Federal Income or excess profits taxes by securing the benefit of a deduction, credit or other allowance which petitioner would not otherwise enjoy.

6. In failing to make any findings of fact with

regard to petitioner's intent and purpose in acquiring the stock of Palos Verdes Estates, Inc.

7. In holding that the determination by the Commissioner as to petitioner's intent and purpose in acquiring said stock was entitled to be weighed and considered in determining the sufficiency of the evidence produced by petitioner on that issue.

8. In holding that the determination by the Commissioner relieved him of the duty to rebut or overcome the evidence produced by the petitioner.

9. In resting its holding and conclusion that petitioner had not sustained its burden of proof solely upon the determination of the Commissioner that petitioner's principal purpose in acquiring the stock of Palos Verdes Estates, Inc., was the evasion or avoidance of Federal income or excess profits taxes within the meaning of §129 of the Internal Revenue Code of 1939, as amended.

10. In that its findings of fact are not supported by substantial evidence or by the weight of the evidence, and are clearly erroneous.

11. In that its opinion and decision is contrary to law and the regulations and is not supported by the evidence or by the findings of fact.

Dated: July 5, 1956.

/s/ M. MITCHELL BOURQUIN,

/s/ GEORGE DALEW,

Attorneys for Petitioner.

Affidavit of service by mail attached.

[Endorsed]: Filed July 5, 1956.

...RARY
SUPREME COURT, U.S.

Office ... FILED
OCT 30 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 590

AMERICAN PIPE & STEEL CORPORATION, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PEYTON FORD
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Washington, D. C.
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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MISCELLANEOUS:

Federal Rules of Civil Procedure
Rule 52(a) 16
Rules of the Tax Court of the United States
Rule 32 ..... 4, 26
Liles, Section 269 of the 1954 Code: Acquisitions to Avoid Federal Income Tax (Oct. 1955) 41 A.B.A.J. 936 26
Magill and Kosmian, The Internal Revenue Code of 1954: Income, Deductions, Gains and Losses (1954) 68 Harv. L. Rev. 201 26

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

AMERICAN PIPE & STEEL CORPORATION, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, American Pipe and Steel Corporation, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled cause on April 17, 1957.

OPINIONS BELOW

The Findings of Fact and Opinion of the Tax Court are reported at 25 T.C. 351. The opinion of the Court of Appeals for the Ninth Circuit, printed as Appendix A, *infra,* is reported at 243 F. 2d 125.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on April 17, 1957 (Appendix B, *infra*). Rehearing was denied June 4, 1957 (Appendix C, *infra*). On August 29, 1957, Mr. Justice Black extended the time for filing the petition for a writ of certiorari to and including November 1, 1957 (Appendix D, *infra*).

QUESTIONS PRESENTED

(1) Does the Tax Court comply with the statutory requirement that it must make findings of fact, where its purported findings consist of nothing more than a partial recital of the evidence and a conclusion that "the evidence does not establish that respondent [the Commissioner] erred"?

(2) May a Court of Appeals, on petition to review a decision of the Tax Court, search the record and make the findings of fact necessary to support the conclusion of the Tax Court, where the Tax Court has failed to make proper findings of fact?

(3) Where the petitioner has adduced competent and relevant evidence to support his position, may the Tax Court rule against the petitioner on the ground that Petitioner's proof does not overcome the *determination* of the Commissioner?

STATUTES INVOLVED

Section 129 of the Internal Revenue Code of 1939, as amended, 26 U.S.C. (1952 ed.) § 129, provides in relevant part as follows:

> (a) *Disallowance of Deduction, Credit, or Allowance.*—If (1) any person or persons acquire,

on or after October 8, 1940, directly or indirectly, control of a corporation, or (2) any corporation acquires, on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately prior to such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income or excess profits tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then such deduction, credit, or other allowance shall not be allowed. For the purposes of clause (1) and (2), control means the ownership of stock possessing at least 50 per centum of the total combined voting power of all classes of stock entitled to vote or at least 50 per centum of the total value of shares of all classes of stock of the corporation.

Section 1117 of the Internal Revenue Code of 1939, as amended, 26 U.S.C. (1952 ed.) § 1117, provides in relevant part as follows:

(a) *Requirement.* A report upon any proceeding instituted before the Tax Court and a decision thereon shall be made as quickly as practicable. The decision shall be made by a judge in accordance with the report of the Tax Court, and such decision so made shall, when entered, be the decision of the Tax Court.

(b) *Inclusion of findings of fact or opinions in report.* It shall be the duty of the Tax Court and of each division to include in its report upon any proceeding its findings of fact or opinion or memorandum opinion. The Tax Court shall report

in writing all its findings of fact, opinions and memorandum opinions.

Section 1141 of the Internal Revenue Code of 1939, as amended, 26 U.S.C. (1952 ed.) § 1141 provides in relevant part as follows:

> (a) *Jurisdiction.* The courts of appeals shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of title 28 of the United States Code.

Rule 32 of the Rules of Practice of the Tax Court of the United States, 26 U.S.C.A. (IRC 1954) § 7453 provides as follows:

> *Burden of proof.* The burden of proof shall be upon the petitioner, except as otherwise provided by statute, and except that in respect of any new matter pleaded in his answer, it shall be upon the respondent.

STATEMENT

A. The Case

Petitioner, American Pipe & Steel Corporation (hereinafter referred to as American Pipe) is a corporation organized under the laws of Nevada and maintaining its principal place of business in Alhambra, California. In 1943, petitioner acquired the capital stock of a California corporation, Palos Verdes Estates, Inc., and in the years 1943, 1944, 1945

and 1946 filed consolidated income tax returns (T. 51-52, 60).[1]

The Commissioner of Internal Revenue determined a deficiency of $213,775 in the taxes paid under the consolidated returns for the years 1944, 1945 and 1946 by disallowing the tax benefits which inured to petitioner as a result of filing the consolidated returns. This disallowance was based upon the Commissioner's determination that the principal purpose motivating petitioner's acquisition of Palos Verdes Estates, Inc. was the evasion or avoidance of federal income or excess profit taxes, within the meaning of Section 129 of the Internal Revenue Code of 1939 (T. 28-43).[2]

Petitioner filed a petition for redetermination of the deficiency with the Tax Court (T. 7-27), and on February 28, 1956, the Tax Court sustained the Commissioner's determination (T. 49-79). The Tax Court made no express finding that the principal purpose of American Pipe's acquisition of Palos Verdes was the evasion or avoidance of income or excess profits taxes. Instead, after setting out some of the evidence introduced at the trial it concluded:

> "On the basis of the foregoing facts, we arrive at the ultimate conclusion that *the evidence does*

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[1] References to the Transcript of Record used in the court below and accompanying this petition are designated by "T." followed by the page number. References to the Appendix to this Petition are designated by referring to the pages thereof, which are distinguished by an "a".

[2] The Commissioner also determined that the consolidated returns were not within the purview of Section 141 of the Internal Revenue Code of 1939 (T. 31). By stipulation, however, the parties agreed that the sole issue to be determined was the applicability of Section 129 (T. 84), which was the only issue decided by the Tax Court and by the Court of Appeals.

> *not establish that respondent erred* in holding that the evasion or avoidance of income or excess profits taxes by securing the benefits of deductions, credits or other allowances which it would not otherwise enjoy was the principal purpose for which American Pipe acquired the capital stock of Palos Verdes." (T. 75) (Emphasis added).

Petitioner thereafter filed a petition for review in the Court of Appeals for the Ninth Circuit (T. 647 et seq.). The Court of Appeals rejected petitioner's attack on the Tax Court's decision. It held that the Tax Court's conclusion, quoted above, was not a finding that the presumption of correctness attaching to the Commissioner's determination had not been overcome; but was rather "an express finding of failure of proof, which, if substantially supported by the evidence requires an affirmance . . ." (3a-4a). The Court of Appeals thereupon examined the record, ignoring for all practical purposes the "findings of fact" made by the Tax Court and set out its own view of the evidence which, though not designated as such, constituted findings of fact of its own. Although plainly relying upon its view of the evidence as so set out in its opinion, rather than upon the "findings" of the Tax Court, the Court of Appeals concluded that the "findings of the Tax Court are supported by substantial evidence", and affirmed the decision (6a).

B. The Facts

In order that this Court may properly assess the questions presented in this case, it is necessary to set out a detailed statement of the facts. Many of these facts were stipulated and few, if any, are in dispute.

American Pipe was organized under the laws of Nevada in 1929, but has maintained its principal place of business in Alhambra, California, a suburb of Los Angeles (T. 51). It has been principally engaged in the steel fabricating business, manufacturing more than 500 different products, including pipe and different types of tanks, as well as products from aluminium and other alloys (T. 55).

The stock control of American Pipe, at all times material to these proceedings, rested in Jack Lane and W. G. Krieger who together held approximately 96% of outstanding shares. For the period in question, Lane was President of American Pipe and Krieger was Secretary or Treasurer (T. 54). Lane not only had substantial experience as an employee and officer of American Pipe, but in addition had an extensive background in many phases of the local real estate business, including the development of tracts, and the management and sale of properties. He had long been familiar with real estate in and around Palos Verdes, California, where he had opened a real estate office after he had acquired a real estate broker's license in 1937 (T. 54-55).

Palos Verdes Estates, Inc. (hereinafter referred to as Palos Verdes) was a corporation formed under the laws of California in 1935 by certain parties in interest to receivership litigation in the California courts. Palos Verdes was in the nature of a corporate reorganization of interests theretofore existing in a large residential project in the Palos Verdes area—a suburb of Los Angeles—which had been plagued by financial difficulties almost from its inception in 1920 (T. 51, 53-54, 85 et seq.).

The connection between American Pipe and Palos Verdes arose as the result of the activities in 1942 of Robert P. Archer, who described himself as "a promoter" (T. 239). Archer had considerable experience in the securities business and in several facets of the real estate business in and around Los Angeles (T. 56, 119-127). He was acquainted with Ben Haggott (T. 58), who had become president of Palos Verdes in 1938 (T. 585), and was also fully aware of Palos Verdes' distressed financial position (T. 586). Archer was close to being "broke" at that time (T. 57) and had no particular business or employment, and he was "searching for something in a business deal or a job or something to get into to get myself a little income" (T. 134). As he explained: "I didn't have too much working capital to go into anything that would be worthwhile, although I realized that my experience in buying building and loan certificates was not too dissimilar from what it would take to buy the preferred stock of a reorganized corporation, and a lot of money had been made in this area on foreclosed real estate bonds, reorganizations—I was real estate-minded . . ." (T. 131).

Archer conceived the plan of acquiring as much of the stock of Palos Verdes as he could and thereafter of seeking to eliminate the state tax assessments on the lots by legal action (T. 131-136). Suits to invalidate tax assessments had apparently become somewhat of a common practice in the area (T. 132-133, 453). Palos Verdes had approximately 700 lots, and if the envisioned legal action were successful, titles to them could be cleared for approximately $80,000 (T. 133-134, 160). It was estimated that even a quick sale of the lots thereafter could bring at least $350,000

(T. 161). He realized that it would be difficult to obtain 100% of the outstanding stock, but he expected that he could obtain at least 70% of the stock, and then by the device of levying an assessment, force the forfeiture or sale of the remainder (T. 58, 135-136, 153, 232 et seq.).

In mid-1942, when Archer was developing his plan to acquire Palos Verdes, American Pipe was negotiating for a substantial defense contract for the manufacture of forge welded containers for lethal gas for use by the Chemical Warfare Service (T. 55-56, 356 et seq.). Archer and Lane had known each other since 1930 or 1931 and had been associated together in real estate ventures in 1937 or 1938 (T. 56, 61). Archer also knew the principal chemical warfare officer in the Los Angeles area (T. 137, 172-173). On or about July 29, 1942, Lane suggested that Archer join the American pipe organization. Archer wanted American Pipe's assistance in financing the acquisition of Palos Verdes. It was agreed that American Pipe would lend Archer $2,500 for the purchase of the Palos Verdes stock, and Archer agreed to accept a position with American Pipe (T. 56).

On August 12, 1942, Archer entered the employ of American Pipe for $100.00 per week as an "expediter" (T. 56), with the further understanding that he would have the necessary free time for the Palos Verdes venture (T. 138-139, 254). On September 3, 1942, American Pipe received a contract from the Chemical Warfare Service to produce 25,000 containers for $3,500.000 (T. 55-56).

Archer went forward with his plans to acquire Palos Verdes. On August 18, 1942, he made an offer

to the shareholders to purchase their shares, with a right to cancel if he could not purchase 70% (T. 57-58). His efforts were successful, and during the next several months he acquired the amount of stock which he sought (T. 59, 156). At a special meeting of the Board of Directors of Palos Verdes on June 23, 1943, a resolution to permit the levying of assessments upon the stock was adopted and on August 26, 1943, an assessment of $40.00 per share was levied (T. 59). In the meantime, Palos Verdes on July 27, 1943 instituted an action to set aside the tax deeds with respect to the lots (T. 58-59). On August 2, 1943, an interlocutory decree was entered setting aside the tax deeds, and restoring the rights of redemption free of interest, penalties and costs, but requiring the payment of the delinquent taxes within six months after the decree became final (T. 59).

Archer, in the meantime, was becoming discouraged as to his ability to raise funds adequate to clear the $80,000 in delinquent taxes. He was concerned because he had already become involved financially with American Pipe in a sizeable sum to acquire the stock; and a small machine shop which he had formed a short time earlier was beginning to develop and demand more of his time (T. 159). Archer, accordingly, talked with Lane and offered to withdraw from the Palos Verdes situation and turn everything he had in the way of stock over to American Pipe in return for cancellation of his financial obligations (T. 263); and to help American Pipe in every way possible in the Palos Verdes deal and also to continue with his work as an expediter (T. 159). On November 25, 1943, the Board of Directors of American Pipe authorized Lane to accept Archer's proposal, which he did (T. 73-74).

American Pipe's Board of Directors had given the Palos Verdes situation careful consideration. When Archer had sought working capital in May of that year, he had sought assistance from American Pipe but had not been given any encouragement (T. 161-2). Lane had shown a personal interest but could not raise the necessary funds. Krieger, Lane's associate in American Pipe, preferred his investments in the oil business (T. 380). Lane, particularly, in the period between May and November, 1943, had examined the Palos Verdes situation extensively (T. 378). He was thoroughly convinced of the profitable possibilities which the lots themselves held, and also felt that such a subsidiary would provide substantial opportunity to American Pipe to enter upon ventures upon which it could not itself conveniently embark (T. 382). That Lane's earlier experience in the real estate field naturally inclined him to this decision is apparent from the projections and analyses he made of the entire matter (T. 407-419).

The sale of the delinquent shares of Palos Verdes was held on December 2, 1943 (T. 59-60), and Archer —now acting for American Pipe (T. 165)—purchased certain remaining shares, and all other shares were declared forfeited in accordance with law (T. 59-60). Archer thereupon delivered all of the shares of Palos Verdes to American Pipe, his indebtedness—which had mounted to $11,248—was cancelled, and American Pipe became the sole shareholder of Palos Verdes (T. 60). Lane was elected president of the subsidiary (T. 18).

In the meantime, all had not gone well with American Pipe's container contract. From the out-

set a variety of production difficulties were encountered, and at the end of September 1943, the contract was in fact cancelled (T. 65-66). It appeared that American Pipe might suffer a loss of as much as $300,000 as a result (T. 66, 374, 389).

The cancellation of this contract, and the emergence of the possibility of a substantial loss to American Pipe, both occurred prior to the time that American Pipe decided to purchase the Palos Verdes stock (T. 60, 66, 420). This fact was of critical significance to any consideration of American Pipe's purpose in making the acquisition, for at the time Palos Verdes was acquired by American Pipe, it did not appear that American Pipe had anything but tax losses (T. 98-99, 374, 389)—and, of course, no tax savings could have been achieved by adding Palos Verdes' losses to American Pipe's losses.

The cancellation of the container contract also had repercussions on Palos Verdes. Under the interlocutory decree, there was only a limited time in which redemption of the lots could be made, but it had become impossible for American Pipe to furnish such funds (T. 405-406). In consequence, the lots were offered in large blocks for sale to contractors and builders (T. 61, 399-400). On December 28, 1943, approximately 450 lots were sold at approximately $40.00 per lot (plus approximately $10,000 in outstanding taxes) to Carl Dahlberg, who had substantial connections in the building field, and was then the vice president of a company which manufactured prefabricated houses; and who—it was believed—could work out some method even under wartime restrictions to commence the construction of homes (T. 61-62, 404-

405, 286-289).[3] The remaining lots were put up for public auction in January of 1944, and most of them were sold for a net of $16,185 after costs of sale (T. 64). Some lots still remaining were sold at private sales, and the remainder of the lots not redeemed or sold were lost under the terms of the Court's final decree, which was entered on May 15, 1944 (T. 64-65).

As a result of these sales, the accounting on the books of Palos Verdes with respect to the lots worked out as follows: (a) those lots sold to Dahlberg in 1943 had a book value of approximately $250,000 and the book loss from the sale amounted therefore to approximately $232,000; (b) the lots sold at public auction in 1944 had a book value of approximately $183,000, and the book loss from the sale amounted therefore to approximately $167,000 (T. 64).

But the actual results of the sale of these lots so far as American Pipe was concerned presented a considerably different picture. Attaching no value to the Dahlberg notes, the sale of lots by Palos Verdes netted $16,185 (T. 64). The cost to American Pipe of the Palos Verdes stock totalled $11,248 (T. 60). Thus, in the space of just a few months, and despite the fact

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[3] Dahlberg was unable to have the wartime restrictions against building lifted, and as a result was unable to procure financial backing (T. 312-314). When the taxes on the lots he purchased became due in early 1944, he borrowed the money from American Pipe (which by that time had received an adjustment on its terminated container contract) and gave his personal interest bearing note to cover the advance (T. 62-63).

Some four years later, in 1948, Dahlberg reconveyed these lots to Lane personally, in a complicated transaction whereby the proceeds of any sales of the lots were required first to be applied to delinquent taxes and penalty assessments, and then to the notes held by American Pipe (T. 63).

that the expectations with regard to these lots had not worked out as planned, American Pipe in practical effect nevertheless made a profit of approximately $5,000 on the transaction. Assuming that American Pipe's acquisition of Palos Verdes was prompted by nothing more than the potential value of the lots,[4] that expectation—despite the difficulties—was in fact justified.

But the benefits to American Pipe from the acquisition of Palos Verdes did not stop with the profitable sale of the Palos Verdes lots. During the years which followed its acquisition by American Pipe, Palos Verdes purchased other real estate including some houses (T. 451). In 1944 and 1945, Palos Verdes built and leased bulk gasoline stations, for which, incidentally, American Pipe supplied the tanks. These transactions were profitable to Palos Verdes, as well as to American Pipe (T. 466-468).

In addition, Palos Verdes went into two oil lease transactions as a joint venturer and oil was brought in making the venture "very" profitable (T. 462-463). In late 1943 or early 1944, Palos Verdes leased an oil refinery which not only turned out to be profitable to Palos Verdes, but also was used to prove out certain

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[4] Other business reasons prompting American's Pipe's acquisition of Palos Verdes were explained in a letter dated November 25, 1943, from Jack Lane to American Pipe's Board of Directors, set out in full in the Tax Court's Findings (T. 67-72). Some of these reasons were that through Palos Verdes, American Pipe could acquire an "in" for the sale of pipe and casing (T. 69-70); could participate in leases on oil properties, thereby facilitating the sale of oil field equipment (T. 70); and could, by providing containers to the purchasers of Palos Verdes houses, enchance the volume of liquified gas container sales (T. 70-71).

new equipment which American Pipe had developed (T. 463-464). Palos Verdes also invested in a boat for charter work to oil companies engaged in exploration of the lands lying off the coast of Southern California (T. 468-469).

Finally, Palos Verdes purchased from American Pipe approximately 1,000 of the lethal gas containers which American Pipe was left with when its chemical warfare contract was cancelled. These containers were sold originally to Palos Verdes for $15,000—approximately double American Pipe's cost. When subsequently the containers could not be used by Palos Verdes for the purposes originally intended, they were converted into dredging pipe, propane tanks and chlorine tanks, and were sold at a profit of approximately $100,000 (T. 74, 472-473).

Moreover, subsequent events also proved the basic soundness of the judgments of Archer and Lane with regard to the value of the Palos Verdes lots. Lane had personally purchased about 200 of these lots in 1947 when the State of California sold them at tax sales, and at the time of the hearing of this case in the Tax Court he owned personally approximately 300 lots (T. 455-456). At wholesale, and from responsible real estate builders who were building in the Palos Verdes area, Lane had been offered approximately $250,000 for these lots, but he had rejected the offers as being too low (T. 456-457).

Subsequent events have thus made it clear that American Pipe's acquisition of Palos Verdes was hardly a quixotic adventure; indeed, they indicated that the reasons originally prompting the acquisition[5]

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[5] See footnote 4, *supra* at p. 14.

were, if anything, rather modest, and that the potential to be realized from the acquisition was even greater than had been envisioned.

REASONS FOR GRANTING THE WRIT

I

It is the statutory duty of the Tax Court to include in its report upon any proceeding the findings of fact upon which its decision and report are grounded. Section 1117 (b) of the Internal Revenue Code of 1939, 26 U.S.C. (1952 ed.) § 1117 (b); *Helvering* v. *Rankin* (1935) 295 U.S. 123; *Timmons* v. *Commissioner of Internal Revenue* (CA 4, 1952) 198 F. 2d 142. Cf. Rule 52(a) *F.R.Civ.P.* The findings constitute the groundwork upon which the entire proceeding rests. If they are absent, the proceeding is without a foundation; and if they are inadequate, the proceeding is on a waivering base.

This Court has observed that the "nature and degree of exactness of the findings required depends on the circumstances of the particular case," *Kelley* v. *Everglades Drainage District* (1943) 319 U.S. 415, 419, but has admonished that they must at least be "sufficient to indicate the factual basis for the ultimate conclusion." *Id.* at 422.

In this case the Tax Court, as the Court of Appeals observed "seems to have incorporated into its findings a review" of the evidence (2a). This characterization is charitable, for even a cursory reading of the findings of the Tax Court will indicate that they fail to fulfill the function required of them. They are, at best, a bald review of the evidence, and an incomplete one at that.

A. *As to their insufficiency.* The findings fail to determine the disputed issues upon which the ultimate conclusion necessarily had to be based. Two examples will suffice.

An important issue in this case is whether Archer, in acquiring the stock of Palos Verdes, was acting for himself or on behalf of American Pipe. The Commissioner contended that he was American Pipe's agent (T. 107-108, 518); petitioner argued that he was acting for himself (T. 93-94). The Tax Court's "findings" indicate only that Archer opened an escrow account in his own name;[6] and that he proceeded to acquire the stock with funds advanced by American Pipe (T. 57). These observations would support either contention, but the critical underlying question is left unanswered.[7]

The findings are equally deficient as to the nature of the sale of the Palos Verdes lots to Dahlberg in December 1943. This is also an important issue because if the Dahlberg sale was not *bona fide* and was really a device to establish a quick tax loss, American Pipe's motive for the acquisition of Palos Verdes would obviously be suspect. Much evidence was offered to indicate that Dahlberg's failure to raise cash for the lots was unforeseen and resulted from factors outside of his control (T. 301, 312, 321-322, 288); and

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[6] This finding is obviously based on the uncontradicted testimony which indicates that the escrow account was in the name of Archer individually, and nothing in the bank records ever indicated that Archer signed or acted as nominee for anyone (T. 638-643).

[7] The Court of Appeals, by contrast, categorically stated that "American Pipe acquired the Palos Verdes stock through a nominee, one Robert P. Archer . . ." (4a).

that at the time the sale was made to him, American Pipe and Palos Verdes had every good reason to believe that he could properly carry out the deal (T. 404-406, 505, 513). But again the "findings" fail to determine the important underlying question. They indicate only that Dahlberg purchased the lots, paying for them by personal note; that the money to pay the back taxes on these lots was advanced by Palos Verdes again for a personal note when Dahlberg was unable to raise the necessary funds himself; that the lots were deeded to Dahlberg by Palos Verdes; that the deed was recorded; and that four years later, Dahlberg reconveyed the lots to Lane personally (T. 62-63). These facts could support either of the two competing contentions: that the sale was merely a device to register a tax loss, or that unforeseen subsequent events caused these unfortunate results. The Tax Court "found" neither.[8]

In thus relying entirely upon a recital or a review of the evidence and failing to select unequivocally from the competing contentions that one which, on the evidence, it considered to be the fact, the Tax Court failed to carry out its statutory fact-finding duty. It violated the well established principle that "findings of fact should be 'a clear and concise statement of the ultimate facts, and not a statement, report, or recapitulation of evidence from which such facts may be found or inferred.' " *Brown Paper Mill Company, Inc.* v. *Irvin* (CA 8, 1943) 134 F. 2d 337, 338 and cases cited; *Hartford-Empire Company* v. *Shawkee Manufacturing Co.* (CA 3, 1944) 147 F. 2d 532, 535.

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[8] The Court of Appeals, by contrast, stated that "the sale to Dahlberg was a mere sham, designed to accomplish a quick sale of the lots to gain the tax benefits" (5a, fn. 5).

Cf. United States v. *Esnault-Pelterie* (1936) 299 U.S. 201.

B. *As to their incompleteness.* The Tax Court failed to make *any* findings on important and material issues as to which evidence was offered. Again, two examples will suffice.

At the trial the Commissioner strenuously sought to prove that efforts were made in 1942 to sell Palos Verdes as an investment "attractive to a defense corporation because of its large invested capital" (T. 590), and that Archer was one of the persons who was trying to do this (T. 108, 178-184, 194-202, 245-252, 590 et seq.). As a reading of the transcript will indicate, the evidence so adduced was quite inconclusive (See particularly T. 592, 181, 194, 252-253). Nevertheless, if true, this fact could be devastating to petitioner; if untrue, it seriously weakened the Commissioner's case. The Tax Court's "findings" or review of the evidence makes absolutely no mention positively or negatively of this line of proof.

Even more striking is the omission from the Tax Court's "findings" of any mention of the many events subsequent to American Pipe's acquisition of Palos Verdes indicating that Palos Verdes was a useful and profitable subsidiary. At the trial, when respondent's counsel questioned the materiality of this line of evidence, and petitioner's counsel explained that he was "endeavoring to show the facts here that this was a legitimate genuine business enterprise in 1943 and that the use of * * * the company since that time, corroborates that view", the court agreed and overruled respondent's objection (T. 465-466). Yet the "findings", or review of the evidence, are singularly

devoid of even a mention of any of these facts: the purchase of other real estate; the acquisition of oil leases; the operation of a refinery; the acquisition of a charter boat for off-shore oil development; and the purchase and subsequent resale of the excess lethal gas containers. See *supra*, pp. 14-15.

C. *As to their inconsistency.* If we are to assume that the "findings" which the Tax Court made are adequate and sufficient, then clearly they are inconsistent in themselves. All of the purported findings deal with or "review" the evidence presented by the petitioner. This evidence is explanatory of the business motivations behind the acquisition of Palos Verdes, and favors rather than controverts petitioner's case. Indeed, there is not much variance between the Tax Court's "findings" and petitioner's petition.

Then comes, at the conclusion, the Court's "ultimate conclusion". Commencing with the explanation "On the basis of the foregoing facts", the Court concludes that petitioner's evidence does not establish that the Commissioner erred (T. 75). This ultimate finding, however, plainly does not derive from the "findings" which preceded it. The ultimate "finding" points East. The earlier "findings" point West. One no more leads to the other than white does to black.

D. *The failure of the ultimate finding.* The Tax Court's decision was determined by its final finding which was:

> "On the basis of the foregoing facts, we arrive at the ultmate conclusion that the evidence does not establish that respondent erred in holding that the evasion or avoidance of income or excess profits taxes by securing the benefits of deductions,

credits or other allowances which it would not otherwise enjoy was the principal purpose for which American Pipe acquired the capital stock of Palos Verdes." (T. 75).

Section 129 of the Internal Revenue Code of 1939 does not authorize the disallowance of benefits where the Commissioner has not erred in making a determination.[9] Section 129 authorizes disallowances only where "the principal purpose . . . is evasion or avoidance . . ." The finding of the former does not constitute a finding of the latter.

So far as counsel can determine, all other Tax Court decisions under Section 129 have contained an express finding as to the issue made determinative by the statute.[10] None have been a finding like the one

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[9] Whether such a finding gives improper weight to the determination of the Commissioner, is discussed *infra*, under III.

[10] See e.g., *Alcorn Wholesale Co.* v. *Commissioner of Internal Revenue* (1951) 16 T.C. 75, 88:

"The King Grocery Company was reorganized into the five petitioner corporations on January 3, 1944, principally for business reasons and not principally to evade or avoid tax."

Berland's Inc. of South Bend v. *Commissioner of Internal Revenue* (1951) 16 T.C. 182, 187:

"The petitioners were not organized principally for the purpose of avoiding Federal income or excess profits tax."

J. E. Dilworth v. *Henslee* (M.D. Tenn 1951) 98 F. Supp. 957, 960:

"The formation of plaintiff's wholly owned subsidiary . . . was not undertaken for the principal purpose of evading or avoiding Federal Income or Excess Profits Taxes."

Chelsea Products, Inc. v. *Commissioner of Internal Revenue* (1951) 16 T.C. 840, 849-850, aff'd. (C.A. 3, 1952) 197 F. 2d 620:

"The principal purpose for the organization of each of the sales companies was to carry on business and not to aid petitioner or the

made here that the petitioner has failed to establish that the respondent erred. And for good reason! This Court has held that "saying that the plaintiff has sustained the burden of proof [or failed to sustain it] as to the designated issue in suit * * * is not an adequate finding of the matters of fact involved in that issue * * *. It is in the nature of a legal conclusion rather than a finding of the underlying facts * * * and is not sufficient to support the judgment which rests on it." *United States* v. *Jefferson Electric Mfg. Co.* (1934) 291 U.S. 386, 408-9. See also *Diller* v. *Commissioner of Internal Revenue* (CA 9, 1937) 91 F. 2d 194; *Anderson* v. *Commissioner of Internal Revenue* (CA 9, 1935) 78 F. 2d 636.

* * * * *

In affirming the decision of the Tax Court, and thereby implicitly holding that the Tax Court's "findings of fact" serve the purpose required of them, the Court of Appeals has obviously decided an important Federal question relating to the administration of the tax laws. It has sustained a method of proceeding, which reaches to the very heart of the decisional process, and which appears to be in conflict with applicable decisions of this Court; *United States* v. *Jefferson Electric Mfg. Co., supra; Kelley* v. *Everglades Drainage Dist., supra; Helvering* v. *Rankin,*

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sales companies in the evasion or avoidance of Federal income or excess profits tax . . ."

See also *Alprosa Watch Corp.* v. *Commissioner of Internal Revenue* (1948) 11 T.C. 240, 243; *Commodores Point Terminal Corp.* v. *Commissioner of Internal Revenue* (1948) 11 T.C. 411, 418-419; *WAGE* v. *Commissioner of Internal Revenue* (1952) 19 T.C. 249, 256. *Cf. Alpha Tank & Sheet Metal Mfg. Co.* v. *United States* (1953) 126 C. Cls. 878, 892.

supra; as well as with the decisions of other courts of appeals; *Brown Paper Mill Company, Inc.* v. *Irvin, supra; Hartford-Empire Company* v. *Shawkee Manufacturing Co., supra;* and, indeed, with its own decisions; *Diller* v. *Commissioner of Internal Revenue, supra; Anderson* v. *Commissioner of Internal Revenue, supra.* It has sanctioned such a departure from the principles applicable to Tax Court proceedings as to call for an exercise of this Court's power of supervision. *Cf. Kelley* v. *Everglades Drainage Dist., supra.*

II

In affirming the decision of the Tax Court, the Court of Appeals not only sanctioned the errors hereinabove described but, indeed, compounded them.

The Court of Appeals apparently concluded that the Commissioner's determination should be sustained, but at the same time recognized that it could not be sustained on the basis of the "findings" of the Tax Court. And so the Court of Appeals indulged in "an examination of the record" (4a) and made "a close scrutiny" (6a) of the evidence to support *its* conclusion. But the examination and scrutiny of the record which it made was not to determine whether the "findings" of the Tax Court were supported by substantial evidence, *cf. Helvering* v. *Rankin,* 295 U.S. at 131, and cases cited; but rather to assist it in making findings of its own.

The following statements, taken from the opinion of the Court of Appeals, are examples of such "findings";

> 1. "the sale to Dahlberg was a mere sham, designed to accomplish a quick sale of the lots to gain the tax benefits" (5a, fn. 5).

2. "American Pipe acquired the Palos Verdes stock through a nominee, one Robert P. Archer, employed by American Pipe" (4a).

3. "any corporation formed to do business in the real estate field would have satisfied the alleged needs of American Pipe" (6a).

4. "within two months of acquisition Palos Verdes was a mere corporate shell" (6a).

We do not concede that these "findings" are supported by substantial evidence. They are, however, the type of findings which should have been made in this case. *But they were made by the Court of Appeals; they were not made by the Tax Court.*[11]

And this is the second vice in the decision below! By taking upon itself the fact-finding function, the Court of Appeals has completely overstepped the bounds of appropriate appellate review and has plainly violated the well-recognized limitation so often stated by this Court:

> "It may be that adequate evidence as to these matters is in the present record. On that we do not pass, for it is not the function of this Court [or any appellate court] to search the record and analyze the evidence in order to supply findings which the trial court failed to make." *Kelley* v. *Everglades Drainage Dist.*, 319 U.S. at 421-22.

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[11] "If the Board has failed to make an essential finding and the record on review is insufficient to provide the basis for a final determination, the proper procedure is to remand the case for further proceedings before the Board [citing cases]. And the same procedure is appropriate even when the findings omitted by the Board might be supplied from examination of the record." *Helvering* v. *Rankin*, 295 U.S. at 131-32.

In this respect, therefore, the decision below constitutes a flagrant departure from the principles applicable to Courts of Appeals in the discharge of their function on petitions for review of Tax Court proceedings, and calls for the exercise of this Court's power of supervision, *Cf. Kelley* v. *Everglades Drainage Dist., supra; Helvering* v. *Rankin, supra.*

III

It is well established that the Commissioner's determination carries with it a presumption of correctness. *J. M. Perry & Co., Inc.* v. *Commissioner of Internal Revenue,* (CA 9, 1941) 120 F. 2d 123; *Crocker* v. *Commissioner of Internal Revenue,* (CA 7, 1936) 84 F. 2d 64. This presumption of correctness, however, necessarily disappears when the petitioner adduces competent and relevant evidence to support his position. *J. M. Perry & Co., Inc.* v. *Commissioner of Internal Revenue, supra* at 124; *Hemphill Schools Inc.* v. *Commissioner of Internal Revenue,* (CA 9, 1943) 137 F. 2d 961. Where such evidence is presented by petitioner, it then becomes incumbent upon the Commissioner to submit evidence in support of his determination, for at that point he can no longer rely on the presumption of correctness, and resolution of the case must be "wholly on the evidence", *Hemphill Schools Inc.* v. *Commissioner of Internal Revenue, supra; J. M. Perry & Co., Inc.* v. *Commissioner of Internal Revenue, supra.*[12]

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[12] The Congress was obviously troubled over the weight to be accorded the Commissioner's determination in a Section 129 case. In the enactment of the 1954 Internal Revenue Code, the House of Representatives sought to establish a "determinative" presumption under certain conditions. The Senate Finance Committee thought

The burden of proof is an entirely different concept. It places upon one of the parties the obligation to prove his case by a preponderance of the evidence. Since Rule 32, *Rules of the Tax Court of the United States,* places the burden of proof on the petitioner, it is necessary in a Tax Court proceeding for the petitioner to prove his case by a preponderance of the evidence; and if he does not, the Commissioner prevails. But whether the petitioner has carried his burden must be determined by the Tax Court "wholly on the evidence" *Hemphill Schools Inc.* v. *Commissioner of Internal Revenue, supra.* In the Tax Court, "the Commissioner cannot rely upon his determination as evidence of its correctness either directly or as affecting the burden of proof." *J. M. Perry & Co., Inc.* v. *Commissioner of Internal Revenue, supra.*

In short, the important distinction between the burden of proof and the burden of going forward with the evidence is that the former sets the basis for decision, while the latter establishes the procedural rules for submitting evidence at the trial.

The decisions of both courts below reflect confusion with respect to this distinction. The final "finding" of the Tax Court, upon which its decision and judg-

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that the House version imposed too heavy a burden on the taxpayer and substituted the "prima facie evidence rule", which was finally enacted. As some commentators have pointed out, however, the procedure in effect prior to this revision already imposed upon the taxpayer the burden of making out a prima facie case; and raised the question what the new version (i.e., the prima facie evidence rule) accomplished. See *Magill and Kosmian, The Internal Revenue Code of 1954: Income, Deductions, Gains and Losses* (1954) 68 Harv. L. Rev. 201, 218; *Liles,* Section 269 of the 1954 Code: *Acquisitions to Avoid Federal Income Tax* (Oct. 1955) 41 A.B.A.J. 936, 937.

ment were founded, is set out in full at pp. 20-21, *supra*. In essence, it was that "the evidence does not establish that respondent [the Commissioner] erred in holding that evasion or avoidance of income or excess profits taxes . . . was the principal purpose" of the acquisition.

The plain language of this "finding" makes it manifest that the Tax Court in this case weighed the evidence adduced by the petitioner against the *determination* made by the Commissioner. In so doing, the Tax Court apparently proceeded on the assumption that the Commissioner's determination had probative weight and evidentiary value.

The Tax Court stated that "the evidence does not establish that respondent [the Commissioner] erred in holding . . ."; no mention is made of the Commissioner's evidence. Nor is there mention anywhere in the "findings" which precede the Tax Court's ultimate conclusion of any of the facts or evidence produced at the hearing by the Commissioner, upon which reliance was placed.

In the face of this forthright statement by the Tax Court, the Court of Appeals stated that

> "The Tax Court acted upon evidence produced by the petitioner *and the Commissioner* at the hearing, and took no account of the presumption; its findings are based on the evidence produced at the hearing." (2a-3a) (Emphasis added).

The Court of Appeals' assertion that the Tax Court acted upon the evidence produced "by the petitioner *and the Commissioner*" is plainly at variance with the Tax Court's own candid admission. The Court of Ap-

peals cannot, by assertion, make the Tax Court say what it did not say.

In the Tax Court's Opinion (as differentiated from its Findings of Fact and Decision) the Tax Court stated "that petitioner has not successfully carried his burden of proof" (T. 79). And the Court of Appeals, relying upon that statement, explained that the "Tax Court's finding in this respect is an express finding of failure of proof" (3a-4a), rather than a weighing of the evidence against the presumption.

But the Tax Court apparently mistakenly believed that it could properly weigh the presumption attending the Commissioner's determination against the evidence presented by the petitioner. And therefore when the Court of Appeals explained that the "Tax Court's finding . . . is an express finding of failure of proof", it failed to answer the important question: Was it a failure of petitioner's proof as against the *proof* of the Commissioner? Or was it a failure of petitioner's proof against the *determination* of the Commissioner?

The significance to be accorded the Commissioner's determination is a question in every case litigated in the Tax Court of the United States. The obligations and responsibilities of the parties to Tax Court litigation depend upon the answer to this question and, in closely contested cases, this answer can be determinative.

The issue is particularly important in cases arising under Section 129 of the Internal Revenue Code of 1939 (as well as Section 269 of the Internal Revenue Code of 1954, 26 U.S.C.A. § 269) which calls for the exercise of a fine judgment on the question of motive. For it should be noted that this section applies only in

instances where the evasion or avoidance of taxes is the *principal* purpose; it does not apply where tax avoidance is a factor which has been considered, but which is not the principal motivating purpose. *Berland's Inc. of South Bend* v. *Commissioner of Internal Revenue,* 16 T.C. 182, 188; *Alprosa Watch Corp.* v. *Commissioner of Internal Revenue* (1948), 11 T.C. 240, 243.

Moreover, and even more important, Section 129 (and Section 269 of the Internal Revenue Code of 1954) makes the fulcrum for decision the purpose to *evade* or avoid tax, or as the Tax Court explained, places in issue the taxpayer's "state of mind" (T. 79). As we have noted, the petitioner in a Section 129 case has the burden of proof and this burden applies as much to the question of intent to evade as to any other issues which may be in the case. The same issue—the question of intent to evade—is also the common denominator to every civil and criminal tax fraud case, yet in those cases the burden of proof rests on the Government. Section 1112 of the Internal Revenue Code of 1939, 26 U.S.C. (1952 ed.) § 1112. See *Spies* v. *United States* (1943) 317 U.S. 492.

Imposing upon the petitioner the burden of proof with respect to "intent to evade" is an anamoly unjustified in reason or logic. However this may be, the criteria for determining whether the petitioner has discharged his burden certainly should not be permitted to rest in ambiguity. Every effort should be made to free the essential, subtle and delicate issue of intent to evade from the confusion which arises when there is a failure clearly to understand and apply the burden of proof concept in Tax Court cases.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 15,174 Apr. 17, 1957

AMERICAN PIPE & STEEL CORPORATION, *Petitioner*,

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

Petition to Review a Decision of the Tax Court of the United States.

Before: ORR, FEE, and BARNES, Circuit Judges

ORR, Circuit Judge:

Petitioner is a corporation principally engaged in the steel fabricating business. In 1943 it acquired the capital stock of a corporation known as Palos Verdes Estates, Inc., hereafter Palos Verdes, and that company became a wholly-owned subsidiary of American Pipe. Thereafter, American Pipe and Palos Verdes filed consolidated returns for the years 1943, 1944, 1945, and 1946. The Commissioner of Internal Revenue determined a deficiency in the taxes paid under the consolidated returns for 1944, 1945, and 1946, by disallowance of the claimed tax benefits resulting from the acquisition of control of Palos Verdes. The Commissioner held that the principal purpose of the acquisition was to avoid or evade Federal income and excess profits taxes within the meaning of Section 129 of the Internal Revenue Code of 1939.

American Pipe petitioned the Tax Court for a redetermination of the deficiency. Issues were joined and a hearing

had before the Tax Court, which resulted in the denial by that court of relief to American Pipe. We are called upon to review that decision.

The Tax Court seems to have incorporated into its findings a review of all the evidence introduced at the trial. It ultimately concluded that American Pipe had not met its burden of establishing that the holding by the Commissioner, that evasion or avoidance of income and excess profits taxes by securing the benefit of deductions, credits or other allowances which it would not otherwise enjoy was the principal purpose for which American Pipe acquired ownership of Palos Verdes, was erroneous.[1]

In addition to the finding of failure of proof on the part of American Pipe, the Tax Court in its opinion made the following statement:

> "The Commissioner having determined that the tax benefit to be gained was the principal purpose behind the acquisition, it was petitioner's burden to prove that such determination was erroneous. After a careful study of the record made, we have concluded that petitioner has not successfully carried his burden of proof. We have accordingly so found."

It is contended that the ultimate finding of the Tax Court, together with the quoted statement from its opinion, do not constitute an express and sufficient finding of fact upon which to base the Tax Court's decision. It is the contention of petitioner that the finding of the Tax Court does no more than say that the presumption of correctness which attaches to the determination of the Commissioner still stands in the case, and was not overcome. We do not so read the findings. The presumption necessarily disappeared upon the introduction of evidence. The Tax Court acted upon evidence produced by the petitioner and the Commissioner at the hearing, and took no account of

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[1] The decision of the Tax Court is reported at 25 T.C. 351.

the presumption; its findings are based on the evidence produced at the hearing.

Our attention is directed by petitioner to the case of Hemphill Schools, Inc., v. Commissioner, 9 Cir., 1943, 137 F.2d 961. That case is clearly distinguishable from the instant case. There the court was concerned with a determination by the Commissioner that the taxpayer corporation was availed of for the purpose of preventing the imposition of the surtax upon its shareholders within the meaning of Section 102 of the Internal Revenue Code of 1939. The Tax Court stated in that case:

> "The evidence does not overcome the determination of respondent that petitioner was availed of for the purpose of preventing imposition of surtax upon its shareholders. . . ."

The Tax Court treated the determination of the Commissioner as evidence. No such situation appears here. The evidence adduced at the hearing was the sole consideration of the Tax Court. It found as follows:

> "On the basis of the foregoing facts, we arrive at the ultimate conclusion that the evidence does not establish that respondent erred in holding that the evasion or avoidance of income or excess profits taxes by securing the benefits of deductions, credits or other allowances which it would not otherwise enjoy was the principal purpose for which American Pipe acquired the capital stock of Palos Verdes."

Petitioner, having invoked the jurisdiction of the Tax Court, entered the hearing burdened with the duty of establishing by at least a preponderance of the evidence that the determination made by the Commissioner was erroneous.[2] The Tax Court's finding in this respect is an

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[2] Tax Court Rule 32; Helvering v. Taylor, 1935, 293 U.S. 507; Greenwood v. Commissioner, 9 Cir., 1943, 134 F.2d 915; 9 Mertens, Federal Income Taxation § 50.61-2 (Supp. 1956).

express finding of failure of proof, which, if substantially supported by the evidence requires an affirmance of its decision.[3]

An examination of the record presents this picture:

With the onset of World War II, American Pipe was on the threshold of obtaining many profitable Government war contracts in the metal fabricating field. On September 3, 1942, it received a Government contract amounting to $3,500,000, for the manufacture of gas tanks. Although the contract was later cancelled by the Government in late 1943, the record discloses American Pipe had a backlog of Government prime and subcontracts of $124,603.29 on December 31, 1943, and a total of $1,892,144.92 of Government contracts awarded during 1944. In short, the prospective profits from war contracts loomed large for American Pipe.

Palos Verdes had been in poor financial condition since 1936. Its principal assets were 695 residential lots located near Palos Verdes, California. The lots had been held by the corporation for many years,[4] and had a tax basis in excess of $430,000. Their market value, as determined by sale of the lots in December, 1943, and January, 1944, was approximately $25,000.

American Pipe acquired the Palos Verdes stock through a nominee, one Robert P. Archer, employed by American Pipe ostensibly as an accountant and expediter for Government contracts. American Pipe advanced funds to Archer, who began purchasing Palos Verdes shares in 1943. Many outstanding shares were acquired through

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[3] Wilmington Trust Co. v. Helvering, 1942, 316 U.S. 164; Gensinger v. Commissioner, 9 Cir., 1953, 208 F.2d 576; Grace Bros., Inc. v. Commissioner, 9 Cir., 1949, 173 F.2d 170.

[4] The lots had been transferred by tax deeds to the State of California in 1938. A decree issuing from an action instituted by Palos Verdes in 1943 allowed redemption of the lots upon payment of delinquent taxes within six months. Most of the lots were redeemed.

a general offer of $2 per share, although Archer himself testified that the shares had been selling between 25 and 45 cents per share on the market. After acquiring a controlling interest in Palos Verdes, the remaining shareholders were forced out by a large assessment.

On December 2, 1943, Archer, who took legal title to the Palos Verdes shares, relinquished them to American Pipe upon cancellation of his indebtedness for the funds advanced to purchase the shares. Immediately, the fiscal year of Palos Verdes was changed to coincide with the calendar year of American Pipe. Less than three weeks later, on December 23, 1943, a liquidation sale of the Palos Verdes lots was held. 451 of the lots were sold to one Carl H. Dahlberg for his personal note for $18,000.[5] The tax loss from this sale amounted to $232,781.00. On January 15 and 16, 1944, most of the remaining lots netted $16,185.00 at a public auction, resulting in tax losses of $167,612.91.

Thus, for a total cost of $11,248.96 to American Pipe, it acquired tax losses of $400,393.91. American Pipe caused Palos Verdes to file a consolidated return for the period December 3, 1943, to December 31, 1943, and for the years thereafter. The resulting offset of American Pipe's gains with Palos Verdes losses, and carryovers of net operating losses, is dramatically displayed in the following table and explanation taken from the Tax Court's findings of fact:

Taxable Year	American Pipe Net Income, or (Loss)	Palos Verdes Net Income, or (Loss)	Consolidated Net Income, or (Loss)
1943	$ 16,880.52	($245,800.74)	($228,920.22)
1944	96,515.44	(419,329.90)	(322,814.46)
1945	144,909.04	(272,164.94)	(127,255.90)
1946	316,644.17	(148,632.80)	(168,011.37)

[5] Dahlberg, now a vice-president of American Pipe, reconveyed the lots to the president of American Pipe in 1948 in extinguishment of his debt to American Pipe for funds advanced to pay back taxes due on the lots. Thus, it appears the sale to Dahlberg was a mere sham, designed to accomplish a quick sale of the lots to gain the tax benefits.

"The amounts stated in the Palos Verdes column and in the Consolidated column for the taxable year 1944, reflect a carry-over of claimed net operating loss of Palos Verdes for the period December 3, 1943, to December 31, 1943, deducted on the consolidated return filed for the year 1944 in the amount of $215,639.88. The amounts stated in the Palos Verdes column and in the Consolidated column for 1945 and 1946 reflect carry-overs of claimed net operating losses for the first and second preceding years of Palos Verdes deducted on the consolidated returns filed for 1945 and 1946, in the amounts of $322,814.46 and $107,174.58, respectively."

Petitioner argues that the acquisition of Palos Verdes was motivated by the business purposes recited in a letter from Jack Lane, president of American Pipe, to his stockholders, proposing acquisition of Palos Verdes. The letter listed the advantages of said acquisition as giving American Pipe a corporation operating in the real estate field to improve its position in the sale of pipe and casing in real estate developments, and providing an organization for the marketing of postwar metal houses to be constructed by American Pipe.

A close scrutiny of the reasons for the purchase of Palos Verdes reveals that any corporation formed to do business in the real estate field would have satisfied the alleged needs of American Pipe. The reasons advanced by petitioner that its acquisition of a practically defunct corporation was the potential value of the lots does not overshadow the conclusion that the acquisition was for a huge potential tax benefit. The fact that within two months of acquisition Palos Verdes was a mere corporate shell is highly significant as militating against petitioner's contention of his non-tax motivation.

The findings of the Tax Court are supported by substantial evidence and its decision is therefore affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 15174

AMERICAN PIPE & STEEL CORPORATION, *Petitioner*,

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

Judgment

Upon Petition to Review a decision of the Tax Court of the United States.

This cause came on to be heard on the Transcript of the Record from the Tax Court of the United States and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the decision of the said Tax Court of the United States in this cause be, and hereby is affirmed.

(ENDORSED) Judgment
Filed and entered April 17, 1957
PAUL P. O'BRIEN, Clerk.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Tuesday, June 4, 1957

Before: ORR, FEE and BARNES, Circuit Judges.

Order Denying Petition for Rehearing

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of petitioner, filed May 16, 1957, and within time allowed therefor by rule of Court,

for a rehearing and rehearing en banc of the above entitled cause be, and hereby is denied.

APPENDIX D

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1957

AMERICAN PIPE & STEEL CORPORATION, *Petitioner*,

VS.

COMMISSIONER OF INTERNAL REVENUE

Order Extending Time to File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 1, 1957.

(SGD) HUGO L. BLACK
Associate Justice of the Supreme Court of the United States

Dated this 29th day of August, 1957.

Office - Supreme Court, U.S.
FILED
DEC
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 590

AMERICAN PIPE & STEEL CORPORATION, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 590

AMERICAN PIPE & STEEL CORPORATION, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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REPLY BRIEF FOR PETITIONER

Respondent's Brief in Opposition is a subtle effort to divert the Court's attention from the Questions Presented in the Petition for Certiorari, and to so confuse the issues as to make it appear that the dispute primarily involves a disagreement with respect to the facts. While we believe that the thrust of this effort is sufficiently transparent as to be manifest to the Court, we set forth in this Reply Brief some of the more flagrant examples of Respondent's efforts to becloud the true issues presented.

1. The three questions presented by the Petition for Writ of Certiorari are set out at p. 2, thereof. They are not and cannot be fairly summarized by the purported Question Presented in Respondent's Brief in Opposition (at p. 2). Respondent's failure fairly to meet the questions presented by Petitioner, aside from being unusual in the certiorari practice, permits Respondent to make arguments entirely unresponsive to the questions presented by Petitioner to this Court. This would clearly resolve many perplexing problems presented either by petitioners seeking certiorari or respondents opposing certiorari.

2. The main portion of the statement of facts set out in the Brief in Opposition is concededly taken from the Opinion of the Court of Appeals (Br. in Opp., pp. 3-6). The portion of the statement, beginning with the words "With the onset" on p. 3 and concluding with the word "respectively" on p. 6 should have been placed in quotation marks, to acknowledge their verbatim derivation. In view of the argument made by Petitioner that the Court of Appeals overstepped the bounds of appropriate appellate review by taking upon itself the fact-finding function, reliance upon a statement of facts taken from the Opinion of the Court of Appeals, is plainly unjustified. Respondent seeks however to answer our challenge that the Court of Appeals erred in its decision, by relying upon that very decision.

3. At the outset of its argument, Respondent seeks to convey the impression that both courts below "found" all the facts necessary and appropriate to support the decision. See the references on p. 7 of the Brief in Opposition to "both courts below held" (line 1); "two courts * * * have sustained" (lines 17-18);

"In view of these concurrent findings" (lines 21-22). Clearly this as a "strawman" of Respondent's own making. Petitioner's contentions are that the Tax Court's findings are deficient in the various respects detailed in the Petition; and that the Court of Appeals not only sanctioned these errors, but compounded them by making findings of its own. Thus, the findings critical to the determination of the case were not made by the Tax Court—which is charged under law with the duty to do so—but were made by the Court of Appeals—which is precluded by law from doing so. Petitioner does not ask this Court to overturn the "concurrent findings" made by the "two courts" below. Petitioner's contentions go to the *functions* of the two courts below: to the scope of the fact-finding obligation; to the permissive boundaries of appellate review; and to the precise significance of the burden of proof in Section 129 cases. None of these contentions fall within the principle imported into this case by the Respondent through reliance upon *Comstock* v. *Group of Investors,* 335 U.S. 211, 214.

4. The *Comstock* decision makes it clear that where certiorari is granted on the basis of an assurance that the facts are "unchallenged", this Court will accept such facts as final (335 U.S. at 213-14). We have no quarrel with this principle except to say that it has no applicability here. *Kelley* v. *Everglades Drainage District,* 319 U.S. 415, which is applicable here, establishes a principle at least of equal dignity and makes it clear that this Court will not tolerate inadequate or deficient findings, and will not permit appellate courts "to search the record and analyze the evidence in order to supply findings which the trial court failed to make." (319 U.S. at 421-22). It is upon the principle of the

Kelley case that Petitioner relies, and to which Respondent has failed to respond.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Petition for Writ of Certiorari, it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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FILED
NOV 27 1957
JOHN T. FEY, Clerk

No. 590

In the Supreme Court of the United States

OCTOBER TERM, 1957

AMERICAN PIPE & STEEL CORPORATION, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 590

AMERICAN PIPE & STEEL CORPORATION, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 49–79) are reported at 25 T. C. 351. The opinion of the Court of Appeals (R. 659–664; Pet. 1a–6a) is reported at 243 F. 2d 125.

JURISDICTION

The judgment of the Court of Appeals (R. 665; Pet. 7a) was entered on April 17, 1957. A petition for rehearing was denied on June 4, 1957. (R. 666; Pet. 7a–8a.) By order of Mr. Justice Black, dated

August 29, 1957, the time to file a petition for a writ of certiorari was extended to November 1, 1957. (Pet. 8a.) The petition for a writ of certiorari was filed on October 30, 1957. The jurisdiction of this Court rests on 28 U. S. C., Section 1254 (1).

QUESTION PRESENTED

Whether American Pipe & Steel Corporation is entitled to the tax benefits which it claimed in the consolidated returns for 1944, 1945, and 1946, by reason of its acquisition of the entire stock of Palos Verdes Estates, Inc.

STATUTE AND REGULATIONS INVOLVED

Section 45, Section 129 and Section 141 of the Internal Revenue Code of 1939, and Section 29.129–1 of Treasury Regulations 111, are set forth in the Appendix, *infra,* pp. 14–17.

STATEMENT

American Pipe & Steel Corporation, taxpayer, is a corporation principally engaged in the steel fabricating business. In 1943 it acquired the capital stock of a corporation known as Palos Verdes Estates, Inc. (hereinafter referred to as Palos Verdes), and that company became a wholly owned subsidiary of taxpayer. Thereafter, taxpayer and Palos Verdes filed consolidated returns for the years 1943, 1944, 1945 and 1946. The Commissioner of Internal Revenue determined a deficiency in the taxes paid under the consolidated returns by disallowance of the claimed

tax benefits resulting from the acquisition of control of Palos Verdes. In asserting the deficiency, the Commissioner held that the principal purpose of the acquisition was to avoid or evade federal income and excess profits taxes within the meaning of Section 129 of the Internal Revenue Code of 1939. (R. 31, 51–52, 55, 60, 76).

A trial of the case being had, the Tax Court made specific findings of fact on the basis of which it made an ultimate finding based on the language of Section 129, sustaining the Commissioner's determination (R. 75). The Court of Appeals held that the findings of the Tax Court were supported by substantial evidence, and affirmed its decision (R. 664; Pet. 6a).

In its opinion, the Court of Appeals succinctly summarized the findings of the Tax Court as follows (R. 661–663; Pet. 4a–6a):

With the onset of World War II, taxpayer was on the threshold of obtaining many profitable Government war contracts in the metal fabricating field. On September 3, 1942, it received a Government contract amounting to $3,500,000, for the manufacture of gas tanks. Although the contract was later cancelled by the Government in late 1943, taxpayer had a backlog of Government prime and subcontracts of $124,603.29 on December 31, 1943, and a total of $1,892,144.92 of Government contracts awarded during 1944. In short, the prospective profits from war contracts loomed large for taxpayer (R. 661; Pet. 4a).

Palos Verdes had been in poor financial condition since 1936. Its principal assets were 695 residential lots located near Palos Verdes, California. The lots had been held by the corporation for many years,[1] and had a tax basis in excess of $430,000. Their market value, as determined by sale of the lots in December, 1943, and January, 1944, was approximately $25,000 (R. 661–662; Pet. 4a).

Taxpayer acquired the Palos Verdes stock through a nominee, one Robert P. Archer, employed by taxpayer ostensibly as an accountant and expediter for Government contracts. Taxpayer advanced funds to Archer, who began purchasing Palos Verdes shares in 1943. Many outstanding shares were acquired through a general offer of $2 per share, although Archer himself testified that the shares had been selling between 25 and 45 cents per share on the market. After acquiring a controlling interest in Palos Verdes, the remaining shareholders were forced out by a large assessment (R. 662; Pet. 4a–5a).

On December 2, 1943, Archer, who took legal title to the Palos Verdes shares, relinquished them to taxpayer upon cancellation of his indebtedness for the funds advanced to purchase the shares. Immediately, the fiscal year of Palos Verdes was changed to coin-

[1] The lots had been transferred by tax deeds to the State of California in 1938. A decree issuing from an action instituted by Palos Verdes in 1943 allowed redemption of the lots upon payment of delinquent taxes within six months. Most of the lots were redeemed. (R. 662; Pet. 4a)

cide with the calendar year of taxpayer. Less than three weeks later, on December 23, 1943, a liquidation sale of the Palos Verdes lots was held. Of the lots sold, 451 were sold to one Carl H. Dahlberg for his personal note for $18,000.[2] The tax loss from this sale amounted to $232,781.00. On January 15 and 16, 1944, most of the remaining lots netted $16,185 at a public auction, resulting in tax losses of $167,612.91 (R. 662; Pet. 5a).

Thus, for a total cost of $11,248.96 to taxpayer, it acquired tax losses of $400,393.91. Taxpayer caused Palos Verdes to file a consolidated return for the period December 3, 1943, to December 31, 1943, and for the years thereafter (R. 662; Pet. 5a). The resulting offset of taxpayer's gains with Palos Verdes losses, and carryovers of net operating losses, is displayed in the following table and explanation taken from the Tax Court's findings of fact (R. 663; Pet. 5a):

Taxable year	American Pipe Net Income, or (Loss)	Palos Verdes Net Income, or (Loss)	Consolidated Net Income, or (Loss)
1943	$16,880.52	($245,800.74)	($228,920.22)
1944	96,515.44	(419,329.90)	(322,814.46)
1945	144,909.04	(272,164.94)	(127,255.90)
1946	316,644.17	(148,632.80)	(168,011.37)

[2] Dahlberg, now a vice president of American Pipe, reconveyed the lots to the president of American Pipe in 1948 in extinguishment of his debt to American Pipe for funds advanced to pay back taxes due on the lots. Thus. it appears the sale to Dahlberg was a mere sham, designed to accomplish a quick sale of the lots to gain the tax benefits (R. 662; Pet. 5a).

As explained by the Tax Court, the amounts stated in the Palos Verdes column and in the Consolidated column for the taxable year 1944, reflect a carryover of claimed net operating loss of Palos Verdes for the period December 3, 1943, to December 31, 1943, deducted on the consolidated return filed for the year 1944 in the amount of $215,639.88. The amounts stated in the Palos Verdes column and in the Consolidated column for 1945 and 1946 reflect carryovers of claimed net operating losses for the first and second preceding years of Palos Verdes deducted on the consolidated returns filed for 1945 and 1946, in the amounts of $322,814.46 and $107,174.58, respectively (R. 663; Pet. 6a).

On the basis of its fact findings, the Tax Court arrived at the ultimate conclusion that the evidence does not establish that the Commissioner erred in holding "that the evasion or avoidance of income or excess profits taxes by securing the benefits of deductions, credits or other allowances which it would not otherwise enjoy was the principal purpose for which American Pipe acquired the capital stock of Palos Verdes" (R. 75). The Tax Court further pointed out that although intent is a state of mind, it is nonetheless a fact to be found, as other facts are found—"by a study of the entire record and the inferences to be drawn therefrom" and concluded, "After a careful study of the record", that taxpayer had not successfully carried his burden to prove that the Commissioner was wrong in determining that the tax benefit to be gained was the principal purpose behind the acquisition of Palos Verdes (R. 79).

ARGUMENT

1. As both courts below held, the application of Section 129. (Appendix, *infra*, pp. 14–15) to the facts of this case, serves to deny the taxpayer the right to offset Palos Verdes' losses against its (the taxpayer's) profits on the consolidated return filed for the taxable years involved. As pertinent herein, that section denies deduction, credit or allowance where a taxpayer has acquired on or after October 8, 1940, at least 50 per cent control of a corporation, the "principal purpose" of whose acquisition was avoidance of federal income or excess profits taxes by receiving the benefit of a deduction, credit, or allowance which such taxpayer would not otherwise enjoy. The question of "purpose", that is, the intent with which the acquisition was made, is one of fact for the trial judge to determine. *Alcorn Wholesale Co.* v. *Commissioner*, 16 T. C. 75, 89. Here two courts, after a review of the entire record, have sustained the Commissioner's determination that the principal purpose of the acquisition by taxpayer of the Palos Verdes stock was one of tax avoidance. In view of these concurrent findings, there is no warrant for review by this Court. *Comstock* v. *Group of Investors*, 335 U. S. 211, 214.

2. In support of its petition, taxpayer contends (a) that the findings of the Tax Court are insufficient, incomplete, and inconsistent; (b) that the ultimate finding of the Tax Court is not sufficient to support its judgment since it is more in the nature of a legal conclusion based upon the presumptive correctness

of the ~~court's~~ Commissioner's determination, than a finding of the underlying facts; and (c) that the Court of Appeals overstepped the bounds of appropriate appellate review in that its examination of the record was not limited to a determination of whether the findings of the Tax Court were supported by substantial evidence, but rather served as a basis for making findings of its own. These contentions are wholly without merit.

(a). As to the first contention, taxpayer ignores the fact that it is the function of the Tax Court to pass upon the credibility of witnesses, weigh the evidence, and draw reasonable inferences therefrom. *Helvering* v. *Nat. Grocery Co.*, 304 U. S. 282, 294–295; *Helvering* v. *Kehoe*, 309 U. S. 277, 279; *Elmhurst Cemetery Co.* v. *Commissioner*, 300 U. S. 37, 40. Equally well established is the Tax Court's power to choose between conflicting inferences. *Wilmington Trust Co.* v. *Helvering*, 316 U. S. 164, 168. It was not incumbent upon the Tax Court, therefore, to make a finding with respect to every item of evidence submitted to it, nor to accept all evidence offered as a fact. The Tax Court was here concerned with the ultimate fact of whether the principal purpose in the acquisition of Palos Verdes by taxpayer was one of tax evasion or avoidance. The Tax Court found taxpayer's intent, "as other facts are found—by a study of the entire record and the inferences to be drawn therefrom," (R. 79) and the record amply supports its finding. Its affirmative finding in this regard was concurred in by the Court of Appeals and is not clearly erroneous. See *United States* v. *Gypsum Co.*,

333 U. S. 364. Moreover, evidentiary facts cannot be used to overcome a finding of ultimate fact unless they compel an opposite conclusion as a matter of law. *Botchford* v. *Commissioner*, 81 F. 2d 914, 917 (C. A. 9th); *Tricou* v. *Helvering*, 68 F. 2d 280, 283 (C. A. 9th). Taxpayer here makes no contention that the alleged insufficiencies or incompleteness of the Tax Court's findings would compel a conclusion opposite to that reached by the Tax Court.

(b) With respect to its ultimate conclusion or finding, the Tax Court specifically stated (R. 75) that it was arrived at "On the basis of the foregoing facts * * *"—i. e., the evidentiary findings which themselves stemmed in substantial part from the adoption of stipulated or undisputed facts (R. 51, 75). Indeed, in its own statement of the facts of the case, taxpayer relies principally upon the findings of the Tax Court and admits that "Many of these facts were stipulated and few, if any, are in dispute" (Pet. 6). Again, in its opinion, the Tax Court, after pointing out that it was taxpayer's burden to prove that the Commissioner's determination was erroneous, recited that its conclusion that taxpayer had not successfully carried its burden of proof was made "After a careful study of the record * * *." Obviously, then, the Tax Court's ultimate finding was more than a legal conclusion based on the presumptive correctness of the Commissioner's determination. It was, in fact, a finding based upon the "evidence" and the "record made" (R. 75, 79). The Court of Appeals was of the same opinion (R. 660; Pet. 2a–3a).

Further, the Court of Appeals, after pointing out that by invoking the jurisdiction of the Tax Court the taxpayer undertook the burden of establishing by a preponderance of evidence that the determination made by the Commissioner was erroneous,[3] also stated that the Tax Court's finding was "an express finding of failure of proof, which, if substantially supported by the evidence requires an affirmance of its [the Tax Court's] decision" (R. 661; Pet. 3a-4a). The court below thereupon proceeded to examine the evidence of record and concluded that the Tax Court's findings were supported by "substantial evidence" (R. 664; Pet. 6a). This was in accord with its function and duty (*Wilmington Trust Co.* v. *Helvering,* 316 U. S. 164, 168) and, contrary to the assertion made by taxpayer, did not constitute a substitution of its view of the facts for that of the Tax Court.

(c). With respect to its third contention that the Court of Appeals exceeded the scope of its reviewing function and made findings of its own, the taxpayer lists (Pet. 23–24) four findings allegedly made by the Court of Appeals rather than the Tax Court. We submit, however, that, at most, these alleged findings are merely summary statements of findings which the Tax Court made. Thus, as to the statement by the Court of Appeals (Pet. 23; 5a; R. 662, fn. 5) that the sale of the Palos Verdes lots to Dahlberg was a mere sham designed to accomplish a quick sale to gain the tax benefits, the Tax Court found that the sale to Dahlberg by Palos Verdes in December, 1943,

[3] Rule 32 of the Rules of Practice of the Tax Court; *Helvering* v. *Taylor,* 293 U. S. 507, 515.

was with the approval of taxpayer corporation; that Dahlberg was personally unable to supply any funds for their purchase, but rather gave his personal note therefor in the amount of $18,000; that shortly after the sale, Dahlberg was unable to pay taxes due on the lots and was forced to borrow the tax money from Palos Verdes giving his note therefor; that four years later in January, 1948, when Dahlberg deeded the lots to Lane personally, he retained no legal or equitable interest therein other than a remote contingent interest; and that even at that time he was unable to supply funds for taxes on the lots (R. 62–63). The clear import of these findings is that the sale of the lots to Dahlberg was a sham, and calling it such, as the Court of Appeals did, does not constitute the making of a finding of fact.

As to the second alleged finding by the Court of Appeals that taxpayer acquired the Palos Verdes stock through a nominee, one Robert P. Archer employed by American Pipe (Pet. 24; R. 662), the findings of the Tax Court show that Archer was employed by taxpayer in the nominal capacity of an "expediter" and accountant (R. 56–57); that immediately thereafter an escrow bank account was opened in Archer's name with money advanced by taxpayer; that shares of Palos Verdes stock were obtained by Archer through this escrow procedure; that at the time the escrow account was opened Archer personally was without funds, had alimony commitments, and was very close to being "broke"; that the formal offer made to the owners of Palos Verdes stock was signed "R. P. Archer, Nominee"

(R. 57–58); and that in bidding upon and purchasing 96 shares of the stock at an assessment sale, Archer was acting for, and used funds furnished by, taxpayer for that purpose (R. 60). The statement made by the Court of Appeals, therefore, is but in recognition of, and is amply warranted by, the findings of the Tax Court in this respect.

The third alleged finding by the Court of Appeals (Pet. 24, 6a; R. 663), that any corporation formed to do business in the real estate field would have satisfied the alleged needs of taxpayer, is followed by the explanation (R. 663; Pet. 6a) that the reasons advanced by taxpayer that its acquisition of a practically defunct corporation was the potential value of the lots "does not overshadow the conclusion that the acquisition was for a huge potential tax benefit." Furthermore, in both its findings (R. 69–72) and opinion (R. 77–78), the Tax Court took note of the alleged reasons given by taxpayer for the acquisition of Palos Verdes including that of acquiring a real estate company having powers broad enough to engage in certain auxiliary activities which were in competition with those to whom taxpayer was selling its products. The Tax Court was not persuaded that the acquisition of this particular corporation (Palos Verdes) was other than for the principal purpose of obtaining tax benefits not otherwise available to it.

Finally, the fourth alleged finding by the Court of Appeals (Pet. 24, 6a; R. 663–664) that within two months of acquisition Palos Verdes was a "mere corporate shell" is not an element essential to the application of Section 129, although, as that court ob-

served, it was highly significant as militating against taxpayer's contention of non-tax motivation. Again, the court below only reflected the facts as found by the Tax Court, namely, that by December 2, 1943, taxpayer had become the owner of all the outstanding shares of Palos Verdes (R. 60), and that by the end of January, 1948, that company no longer owned the lots which constituted its principal asset R. 53, 62–65).

CONCLUSION

This case turns upon its own facts, there is no conflict of decisions, and the decision of the Court of Appeals is correct. The petition for writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 1957.

APPENDIX

Internal Revenue Code of 1939:

SEC. 45 [As amended by Sec. 128 (b) of the Revenue Act of 1943, c. 63, 58 Stat. 21]. ALLOCATION OF INCOME AND DEDUCTIONS.

In any case of two or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Commissioner is authorized to distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses.

(26 U. S. C. 1952 ed., Sec. 45.)

SEC. 129 [As added by Sec. 128 (a) of the Revenue Act of 1943, *supra*]. ACQUISITIONS MADE TO EVADE OR AVOID INCOME OR EXCESS PROFITS TAX.

(a) *Disallowance of Deduction, Credit, or Allowance.*—If (1) any person or persons acquire, on or after October 8, 1940, directly or indirectly, control of a corporation, or (2) any corporation acquires, on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately prior to such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the trans-

fero corporation, and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income or excess profits tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then such deduction, credit, or other allowance shall not be allowed. For the purposes of clauses (1) and (2), control means the ownership of stock possessing at least 50 per centum of the total combined voting power of all classes of stock entitled to vote or at least 50 per centum of the total value of shares of all classes of stock of the corporation.

(b) *Power of Commissioner to Allow Deduction, Etc., in Part.*—In any case to which subsection (a) is applicable the Commissioner is authorized—

(1) to allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income and excess profits tax for which the acquisition was made; or

(2) to distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or avoidance of Federal income and excess profits tax for which the acquisition was made; or

(3) to exercise his powers in part under paragraph (1) and in part under paragraph (2).

(26 U. S. C. 1952 ed., Sec. 129.)

SEC. 141 [As amended by Sec. 159 (a) of the Revenue Act of 1942, c. 619, 56 Stat. 798]. CONSOLIDATED RETURNS.

(a) *Privilege to File Consolidated Income and Excess-Profits-Tax Returns.*—An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making consolidated income and excess-profits-tax returns for the taxable year in lieu of separate returns. The making of consolidated returns shall be upon the condition that the affiliated group shall make both a consolidated income-tax return and a consolidated excess-profits-tax return for the taxable year, and that all corporations which at any time during the taxable year have been members of the affiliated group making a consolidated income-tax return consent to all the consolidated income- and excess-profits-tax regulations prescribed under subsection (b) prior to the last day prescribed by law for the filing of such return. The making of a consolidated income-tax return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated returns shall include the income of such corporation for such part of the year as it is a member of the affiliated group. * * *

* * * * * *

(d) *Definition of "Affiliated Group".*—As used in this section, an "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

(1) Stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of each of the includible corporations (except the common

parent corporation) is owned directly by one or more of the other includible corporations; and

(2) The common parent corporation owns directly stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of at least one of the other includible corporations.

As used in this subsection the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

* * * * *

(26 U. S. C. 1952 ed., Sec. 141.)

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

SEC. 29.129–1 [As added by T. D. 5426, 1945 Cum. Bull. 196.] *Meaning and Use of Terms.* —As used in section 129 and in sections 29.129–2 to 29.129–5, inclusive—

(a) The term "allowance" refers to anything in the internal revenue laws which has the effect of diminishing tax liability. The term includes, among other things, a deduction, a credit, an adjustment, an exemption, or an exclusion.

* * * * *

(e) The term "person" includes an individual, a trust, an estate, a partnership, a company, or a corporation.

U. S. GOVERNMENT PRINTING OFFICE: 1957